*HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.10104 of 2007

% 30-10-2007

# I.Manga Raju .. Petitioner

And

$ The District Collector,
Nellore
And others .. Respondents

<GIST:

>HEAD NOTE:

¡ Counsel for petitioner : Sri M.Ravindranath Reddy

^ Counsel for respondents 1 to 4 : G.P. for Civil Supplies
Counsel for respondent No.5 : Sri N.Ravi Prasad
Counsel for respondent No.6 : Sri V.Sudhakar Reddy

?CASES REFERRED:

**1 AIR 1964 S.C. 72**
**2 1979(3) SCC 489**
**3 2005(5) SCC 181**
**4 2000(2) SCC 617**
**5 1993 Supp. (4) SCC 46**
**6 2004(5) A.L.T., 322**
**7 2003(8) SCC 673**
**8 1994(1) SCC 1**

[9] 2001(5) SCC 289
[10] 2000(1) SCC 278
[11] AIR 2003 S.C. 2723
[12] AIR 2000 S.C.C. 833
[13] 1995(3) SCC 757
[14] 1983(1) A.L.T., 233
[15] 2000(1) A.L.D. 9(S.C.)
[16] W.A.No.425/2007, dated 4-7-2007
[17] W.P.No.475/2007, dated 3-4-2007
[18] W.P.No.12110/2004, dated 20-6-2005
[19] W.P.No.3619/1991 dated 19-3-1991
[20] W.P.No.454/91, dated 26-4-1991
[21] 1996(1) L.S. 16
[22] W.P.No.3015/2006 dated 3-3-2006

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.10104 of 2007

Date : 30-10-2007

Between:

I.Manga Raju .. Petitioner

And

The District Collector,
Nellore
And others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.10104 of 2007

**ORDER:**

**1.** Heard the Counsel on record and perused the respective stands taken by the parties and perused the records produced before this Court.

**2.** This Court ordered Notice before admission on 9-5-2007 and granted interim suspension for a period of six weeks. On 19-6-2007, the following order was made :

"Counter affidavits have been filed on behalf of the official respondents as well as the 6th respondent.

At the request of the learned Counsel for the

petitioner, post on 26-6-2007 for Reply.

So far as interim order is concerned, though it is contended by the 6th respondent that pursuant to the order of bifurcation order of the authorization was granted in his favour o 2-5-2007 and basing on the same he had paid the amount on 5-5-2007 and the stocks were released in his favour for the month of May, 2007 immediately thereafter, the learned Counsel for the writ petitioner has placed before this Court the proceedings of the 4th respondent dated 23-5-2007 which shows that in compliance with the interim suspension ordered by this Court dated 9-5-2007 the appointment of the 6th respondent has been kept in abeyance until further orders and that for the month of June, 2007 the commodities were not released to the 6th respondent.

The learned Counsel for the 6th respondent could not dispute the same but stated that as a matter of fact the commodities were not issued even to the writ petitioner for the month of June, 2007.

Be that as it may, having regard to the fact that the Writ Petition is posed to 26-6-2007 for hearing, I deem it appropriate to direct that in the meanwhile Status Quo obtaining as on today shall be maintained with regard to be distribution of commodities for the shop in question leaving it open to the 4th respondent to get the commodities distributed by making alternative arrangements for the month of June, 2007, if not already distributed, so as to avoid any inconvenience to the card holders."

On 10-9-2007, *rule nisi* was issued and inasmuch as W.V.M.P.No.1196/2007 was filed, the matter was adjourned and it was directed to list the matter for Final Hearing by order dated 20-9-2007. Thus is the matter is coming up for Final Hearing.

**3.** The brief facts which ultimately paved the way for filing of the present Writ Petition are as hereunder. Pursuant to a notification issued in the year 1984, the petitioner and several others had submitted applications for temporary appointment as Fair Price Shop Dealer for Shop No.19, now renumbered as Shop No.27. The 3rd respondent by his proceedings dated 21-4-1984 appointed the petitioner and the 6th respondent as Fair Price Shop Dealers by splitting the said shop into two. Thereafter, the said proceedings were questioned in Appeals and the issue thereof underwent chequered history of Appeals, Revisions, Writ Petitions and Writ Appeal. Ultimately the said litigation culminated in the Judgment of this Court dated 6-7-1984 in W.P.No.13887 of 1984 thereby directing that the Shop in question should be treated as a single shop without bifurcation and the consideration with respect to the said appointment shall be confined between the petitioner and the 6th respondent. The said Judgment dated 6-7-1984 became

final and consequently the 1st respondent considered the inter se merits of the petitioner and the 6th respondent by proceedings dated 30-4-1989 and appointed the petitioner as Permanent Fair Price Shop Dealer for the said shop. It is also stated that the 6th respondent again preferred W.P.No.8213/1990 against the appointment of the petitioner and the same was dismissed by Judgment dated 18-6-1990. Aggrieved by the said Judgment, the 6th preferred W.A.No.808/90 and the Division Bench of this Court by Judgment dated 12-7-1990 set-aside the Judgment of the Single Judge and directed that it is open for the authorities to renotify the same and invite applications and consider the claims thereof and pass necessary orders of appointment. It is also stated that consequently by notification dated 15-4-1991, applications for the Dealer of the Shop in question on permanent basis were invited. Pursuant to the same, 19 applicants including the petitioner and the 6th respondent submitted applications and upon considering the merits and demerits of all the applicants, the 3rd respondent by proceedings dated 15-6-1991, appointed the petitioner as permanent Fair Price Shop Dealer for the said Shop. Thereafter, no Appeals were filed and thus giving a momentary quietus to the issue. It is also further stated

that since 1984 till date i.e., for the past 23 years, the petitioner had been distributing the commodities in the said Shop without any complaint or blemish except one inspection by the Vigilance Department on 17-3-1993 and the said proceedings ended in favour of the petitioner and even the said inspection was made on the basis of several complaints lodged by the 6th respondent. It is also further stated that the 6th respondent in collusion with the 4th respondent, who also had been impleaded in person as 5th respondent, conceived a plan to bifurcate the Shop in question. In pursuance thereof, the 4th respondent took steps in trying to get resolution recorded by Food Advisory Committee of the area and in the said process, he had handed over the said record to the 6th respondent to facilitate him to obtain signatures of the Chairman, Kavali Municipality, who is one of the members of the said Committee. On coming to know of the same, the petitioner made representation dated 9-9-2006 to various authorities bringing the aforesaid facts and the past history to their notice and requested them to prevent foisting of such a resolution passed to the said effect. In view of the said representation dated 9-9-2006, the 4th respondent developed animosity against the petitioner and in pursuance thereof, he had inspected the shop of the petitioner on 1-11-2006 at 9 P.M. and alleged non-

existing variations in stock against the petitioner and submitted a report to the 3rd respondent in this regard. The 3rd respondent basing on the said report, in turn placed the authorisation of the petitioner under suspension by proceedings dated 5-11-2006 served on the petitioner on 14-11-2006. Questioning the same, the petitioner filed W.P.No.26004/2006 and this Court while admitting the said Writ Petition on 15-12-2006 passed interim orders suspending the proceedings dated 5-11-2006. While the matters stood thus, in the first week of April 2007, the petitioner came to know that the 1st respondent had issued proceedings dated 17-3-2007 bifurcating the Shop in question into four and while retaining one with the petitioner, directed one out of the other three shops to be given to the 6th respondent by way of converting his licence of conventional dealer (Nominated Retailer) as Fair Price Shop Dealer in accordance with the guidelines issued by the Government. It is also stated that with great difficulty, the petitioner obtained a copy of the said proceedings and from a perusal of the same, it is evident that the 6th respondent had submitted a representation in 2006 and basing on the said representation the respondents 3 and 4 had submitted reports for dividing the Shop in question

into four shops. Consequently, basing on the said representation and reports, the proceedings dated 17-3-2007 were issued. Immediately, the petitioner made representation on 14-4-2007 to the respondents 1, 3 and 4 and requested them to cancel or withdraw the proceedings dated 17-3-2007. Here itself it may be stated that it appears several representations had been made by the father of the writ petitioner, a retired Revenue official and also by the writ petitioner as well. It may be appropriate to have a glance at the representation dated 22-5-2007 of the writ petitioner and the contents thereof read as hereunder :

To
The Tahsildar (In person) Kavali,
Kavali Date: 22-5-2007

Sir,

Sub:- Civil Supplies – P.D.S. – Kerosene distribution in Kavali Municipality, Kavali – Allotment of Kerosene to N.Rs. and F.P. Shop Dealers for May, 07 – Sri A.Radhakrishnaiah formerly N.R. and suspended F.P. Shop Dealer not eligible for allotment of Kerosene for May, 07 – Regarding.

Ref:- My earlier representations on the subject.

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Sri A.Radhakrishnaiah of Vengalrao Nagar, Kavali was originally Kerosene Nominated Retailer up to April, 07 and he was distributing kerosene to some card holders of Vengalrao Nagar, Kavali upto

April, 2007. Even then he was allotted excess quantity of kerosene than other N.Rs. in Kavali Town according to the latest policy of Kerosene distribution irregularly ordered by the Joint Collector, Nellore without competency as per the orders of the Government in force till then. However, the changed policy of Kerosene distribution is in force in Kavali Municipality. This Sri A.Radhakrishnaiah is converted and appointed as a F.P. ShopDealer by the Revenue Divisional Officer, Kavali to the bifurcated F.P. Shop No.27C with the result, he can no longer be treated as a Kerosene N.R.

It is also important to note that his illegal appointment as F.P. Shop Dealer made by the Revenue Divisional Officer, Kavali has been suspended by the Hon'ble High Court, A.P. Hyderabad on 9-5-2007 and the said High Court wire order was received by the Tahsildar, Kavali on 10-5-2007. It is learnt in the office of the District Supply Officer, Nrllore that the Collector, Nellore has ordered on 21-5-2007to implement the said High Court orders without further delay on the report submitted by the Tahsildar, Kavali soliciting instructions as to the further course of action to be taken on the High Court wire orders and a phone message was issued to the concerned from the office of the District Supply Officer, Nellore. Hence the said Sri A.Radhakrishnaiah cannot be treated either as F.P. Shop Dealer or as Kerosene N.R. since there is no acceptable and valid order from any competent authority for his reversion to his earlier Nominated Retailership. Presumption and

assumptions will not play any role in such statutory functions. His F.P. Shop dealership is temporarily suspended in the Writ Petition filed by me, but it may finally be decided in favour of this Sri A.Radhakrishnaiah (N.R.). Hence till the Writ Petition No.10104/2007 is finally disposed off, this Sri A.Radhakrishnaiah is neither a F.P. Shop Dealer nor a Kerosene N.R. Hence he shall not be allotted any quantity of Kerosene and that portion of kerosene may be allotted to the regular F.P. Shop Dealer of original Shop No.27 of Kavali Town, so as to enable such of the card holders at least to draw all kind of E.Cs. including kerosene from one shop at least for some time unto the final disposal of the Writ Petition No.10104/2007.

I request the Tahsildar, Kavali to consider this aspect judicially at least now and do justice to myself and some card holders attached to me and to this Sri A.Radhakrishnaiah N.R. upto 4/07 forgetting all earlier factual relationship between the Tahsildar and Sri A.Radhakrishnaiah, Kerosene N.R.

Be pleased to consider judiciously.

Yours sincerely,
Sd/-
(I.Mangaraju)
Dealer of original F.P. Shop
No.27 of Kavali Town,
Kavali

It is also stated that the petitioner came to know that the 3rd respondent issued consequential proceedings dated

3-4-2007 thereby allotting one of the three shops, Shop No.27(C), to the 6th respondent and issued notification in newspapers on 16-4-2007 inviting applications for appointment with respect to the other newly bifurcated two shops along with several other Shops in the Division. The said two shops had been shown at Serial Number 19 (27-A) and 20 (27-B) of the said notification. It is specifically averred that the impugned proceedings dated 17-3-2007 is in violation of mandatory procedure prescribed in this regard. As per the procedure, the Food Advisory Committee of an area in question is required to consider all the aspects of public distribution through Fair Price Shop Dealers including bifurcation. It is in fact specifically provided that genuine necessity for the said bifurcation has to be considered and only thereupon they have to take a decision by way of resolution and communicate the same to the competent authorities viz., respondents 1 and 3, and only thereupon the 1st respondent is required to take consequential steps to execute the said resolution. In the case on hand, it is reliably learnt that no such resolution is passed and in fact the said issue had not even cropped up before the Food Advisory Committee and hence the same is illegal and arbitrary. It is also averred that the impugned action of the respondents

especially the 4th respondent is a malafide one for the sale reason that he had initiated the whole affair in collusion with at the instance of and to unlawful benefit of the 6th respondent and it is more than evident from the chronology of events since 1984. It is also further stated that the whole affair had been initiated or instigated by the 6th respondent who had taken it as a prestige issue and had been relentlessly working behind the scene since 1984. The chronology of events substantiates the contention of the petitioner and the same also discloses that the said shop had been driven to various Appeals, Revisions, Writ Petitions and Writ Appeals. In spite of the same, the said issue had been finally settled by more than one proceeding to be more specific on two occasions viz., on 2-5-1989 and on 15-6-1991 and still the 6th respondent had been attempting the same through the officers who were posted to the post of the 4th respondent including the 5th respondent and hence the malafides are writ large in the case in question. It is also stated that the very fact that the 6th respondent was straight away given appointment without even considering whether he qualifies vis-à-vis the guidelines issued in this regard. As per the guidelines even for conversion of nominated retailer licence to that of Fair Price Shop Dealer, he is required to be within the age of 18 to 40 years and more

over he should be a pass in 10th Class. The 6th respondent's date of birth even going by his document is 15-7-1947 and thus he is 59 and odd years old as on the relevant date. Further, the said document only discloses that he is only 9th passed. In fact, the first wife of the 6th respondent had retired from service of Health Department of A.P. about four years back and these facts clearly establish that the respondents ought not to have initiated the entire proposal at the instance of the 6th respondent who is deriving sadistic pleasure. The impugned action of the respondents is not independent by application of mind by the Food Advisory Committee or the respondents. It is further stated that the respondents ought to have noticed that the alleged order dated 19-6-2006 of the High Court passed in W.P.No.13095/2006 is with respect to some other individual and even according to the said orders, it is only to consider their cases as per the guidelines in vogue in this regard and there is no positive direction to automatically convert any kerosene dealers into Fair Price Shop Dealers irrespective of the eligibility criteria. Further, it is also stated that the respondents ought to have noticed that the petitioner's shop is within a kilometer of all the card holders who are attached to his shop which is in accordance with the

guidelines in this regard and the petitioner had been distributing the stocks without any complaint except one frivolous allegation pending before this Court and that too at the instance of the respondents 5 and 6. It is also further stated that the anxiety and the speed at which the action was initiated also discloses the malafides of the 5th respondent for the reason that the 6th respondent is also in the same ward as the petitioner i.e., Municipal Ward No.18 and the same was completely overlooked. Further, it is averred that the respondents also ignored the economic viability of the Fair Price Shop in question while initiating the impugned action. The total sales of the shop in question is Rs.2,03,613/- as against the purchase value of Rs.1,98,192.57. Thus the difference thereof constitutes the gross profit of Rs.8,520.43. The expenses per month comes to Rs.7500/-, thus leaving a net profit of Rs.1,020.43. The aforesaid calculations are made as per the allotments for the month of April 2007. It is also relevant to mention that Kavali is Ist Grade Municipality and the expenses will be on the higher side compared to rural areas. If the ultimate profit for unbifurcated shop is Rs.1,020/-, then the profit for the said shop bifurcated numbering into four will be negligible. As per the guidelines, the respondents are required to consider the aspect of viability also and even on the said ground, the

action of the respondents is arbitrary and illegal. The respondents ought to have noticed that the Government issued instructions in Circular dated 25-2-2006 directing all the Collectors (CS)/CRO, Hyderabad not to transfer any card or cards from any of the Fair Price Shops till the completion of the process of registration of new cards. The said instructions are still in vogue and in spite of the same, the respondents initiated the impugned action. As per the said notification dated 16-4-2007, the last date for receiving the applications is 4-5-2007 in so far as two shops are concerned. In so far as the alleged shop allotted to the 6th respondent is concerned, till date he had not been allotted any stocks and the petitioner is distributing the stocks as on date in respect of the shop in question which the petitioner had been doing since 1984. The distribution would be starting only after 10th of every month. Therefore if the impugned proceedings of the respondents are not sustained, the petitioner will be put to irreparable loss and serious hardship for the reason that the petitioner discontinued his B.A. Final year and his family consists of himself, his wife, daughter and son who are studying degree and intermediate respectively. In such circumstances, the writ petitioner approached this Court praying for the appropriate reliefs which had been

specified supra.

**4.** A counter affidavit was filed on behalf of respondents 1 to 4, but however the counter affidavit was sworn to by the 4th respondent/Mandal Revenue officer, presently called Tahsildar who had been impleaded in his personal capacity as well, as 5th respondent. In the counter affidavit filed on behalf of respondents 1 to 4 sworn to by the 4th respondent, it is stated that as the cards issued to the below poverty line families (White and A.A.Y) for which essential commodities to be distributed were increased from 1082 to 2168 i.e., more above 100% and as all the card holders in the Fair Price Shop in question lie in the block of 11-33 (Vengalarao Nagar) of Kavali Municipality, the quantity of essential commodities to be distributed became very large. As the quantity to be distributed became very large, the distribution of essential commodities is getting slowed and the card holders are facing much difficulties to draw monthly quota in time. Therefore, the bifurcation of the shop in question had been taken up in the interest of the public and public convenience proposals were submitted to the higher authorities. Accordingly, the District Collector had considered the proposals and ordered for bifurcation of the Fair Price Shop No.27 into four shops. Basing on the said orders, the Revenue Divisional Officer, Kavali had

converted Sri A.Radhakrishnaiah (6th respondent in the present Writ Petition), the existing Kerosene Nominated Retailer as the Fair Price Shop Dealer for the Shop No.27C. Sri I.Mangaraju, the present dealer is allotted Shop No.27. The remaining two shops are ordered to be filled up by following the due procedure i.e., by notifying the vacancies. Further it is stated that it is not correct to say that the bifurcation of shop was in violation of principles of natural justice. Vengalarao Nagar was formed some 30 years back in Kavali town and as it is newly formed area, a separate Fair Price Shop was arranged for distribution of essential commodities under Pubic Distribution System and Sri I.Mangaraju was appointed as Fair Price Shop Dealer. The population of the said area is 11,069 as per Census 2001. In the year 2005 computerised ration cards were issued to all the existing card holders and also to other eligible families who do not possess ration cards. The position of ration cards before and after issuance of computerized cards is as follows:

| Nature of cards issued | The existing card position before issuance of computerized cards in 2005 | Cart position after issuance of computerized ration cards |
|---|---|---|

| | | |
|---|---|---|
| White cards (Cards issued to families lying Below Poverty Line) | 961 | 2013 |
| AAY (Cards issued to poorest of the poor) | 121 | 155 |
| Annapurna | 11 | 2 |
| Pink cards | 879 | 668 |
| Total | 1972 | 2838 |

It is further stated that as the cards issued to BPL families (White and A.A.Y) for which essential commodities need to be distributed were doubled i.e., from 1082 to 2168 (100% increase) and as all the card holders in the Fair Price Shop lie in the block of 11-33 (Vengalarao Nagar) only of Kavaly Municipality, the quantity of essential commodities to be distributed became very large. As the quantity to be distributed became very large, the distribution of essential commodities is getting slowed and the card holders are facing difficulties to draw monthly quota in time and Complaints are being received from the card holders on the said issue. Therefore, as it is not feasible to tag on some cards to the present shop to the

other existing shop, bifurcation of Shop No.27 became essential and accordingly it was proposed to bifurcate the shop in the interest of the public and proposals were submitted to the higher authorities for bifurcation of the shop. Accordingly, the District Collector had considered the proposals and bifurcated the Fair Price Shop No.27 into four shops. Basing on the said orders, the Revenue Divisional Officer, Kavali had converted Sri A.Radhakrishnaiah (6th respondent in the present Writ Petition), the existing kerosene Nominated Retailer as the Fair Price Shop Dealer for the Shop No.27C duly considering the orders of this Court in W.P.No.13095/2006 dated 29-6-2006 and the circular instructions of the Commissioner of Civil Supplies, A.P., Hyderabad in PDS-III(3)/2847/2005 dated 19-3-2005. Sri I.Mangaraju, the present dealer is allotted Shop No.27 i.e., one among the bifurcated shops. The remaining two shops are ordered to be filled up by following the due procedure i.e., by notifying the vacancies. It is also further stated that the issues narrated by the petitioner have no relevancy to the present issue and for the reasons aforesaid the Shop was bifurcated and it is justified and there is no illegality in the said bifurcation. Further it is averred in para-7 of the counter affidavit that the

allegations leveled by the petitioner at para-7 are baseless and false. It is stated that the contention of the petitioner that the 4th respondent conceived a plan to bifurcate the Shop in question in collusion with Sri A.Radhakrishnaiah, the Kerosene Nominated Retailer for the Fair Price Shop in question is not correct. The Fair Price Shop No.27 is being operated for the card holders of the area of 11-33 block of Kavali Municipality i.e., Vengalarao Nagar/Toofan Nagar of Kavali Municipality. There is only one Fair Price Shop in the said area and prior to issuance of computerized ration cards during 2005, the card position had abnormally increased interest shop. Therefore it was proposed to bifurcate Shop No.27. Further, the contention of the petitioner that the 4th respondent tried to get a resolution of the Food Advisory Committee through Sri A.Radhakrishnaiah is not correct. The bifurcation is proposed only for the convenience of the public. The petitioner has no absolute right vested in him to stall the bifurcation for his personal benefits. Public interest is paramount than personal consideration. It is further stated that during the monthly meeting of Fair Price Shop Dealers conducted on 1-11-2006, the petitioner had furnished the backlog reports, sales registers etc. Further there are many allegations from the card holders against the petitioner-dealer. On 26-4-2006, an adverse news

item was also published in Prajasakthi about the irregularities of the petitioner-dealer. As there are allegations and as the dealer had not submitted the records from the month of October 2006 after completion of the Dealers' meeting at 6 p.m., the 4th respondent proceeded to the Fair Price Shop along with the Civil Supplies Deputy Tahsildar, Mandal Revenue Inspector and in the presence of the petitioner inspected the Shop, verified the records and bar coded coupons etc., and found abnormal variations. Therefore a case under Section 6-A of the Essential Commodities Act was booked against the petitioner. The Revenue Divisional Officer, Kavali had suspended the authorisation of the Dealer. The petitioner filed W.P.No.26004/2006 and this Court was pleased to pass interim stay orders on the orders of the Revenue Divisional Officer, Kavali in which the authorisation of the petitioner was suspended. Subsequently, the Joint Collector heard the case and ordered for confiscation of the entire seized stocks to the Government by proceedings Rc.B/568/2006, dated 13-5-2007. Further it is averred in para-8 of the counter affidavit that the orders of the 3rd respondent-Revenue Divisional Officer, Kavali dated 3-4-2007 bifurcating the shop were served on the petitioner on

24-4-2007 and hence thee is no difficulty in obtaining the said copy by the petitioner. As the Shop was bifurcated in accordance with the Rules in force, the contention of the petitioner does not deserve consideration. Consequent to the orders of the District Collector, Nellore, the Revenue Divisional Officer, Kavali had converted Sri A.Radhakrishnaiah (6th respondent in the present Writ Petition), the existing Kerosene Nominated Retailer as the Fair Price Shop Dealer for the Shop No.27C duly considering the orders of this Court in W.P.No.13095/2005 dated 29-6-2006 and the circular instructions of the Commissioner of Civil Supplies, A.P., Hyderabad in PDS-III(3)/2847/2005 dated 19-3-2005. Sri I.Mangaraju, the present Dealer is allotted Shop No.27 i.e., one among the bifurcated shops. The remaining two Shops are ordered to be filled up by following the due procedure i.e., by notifying the vacancies. Thus, there is no irregularity in converting Sri A.Radhakrishnaiah as Fair Price Shop Dealer and notifying the other vacancies. It is further averred that the Shop was bifurcated according to the Rules in force. However, the petitioner was not deprived of his dealership and he was retained as the Dealer for Shop No.27 among the bifurcated shops with 504 white cards, 39 AAY cards, 2 Annapurna Cards and 167 Pink cards. The allotment made to him is a little more

of the less on par with other dealers in Kavali town. There is no prejudice caused to the petitioner nor any of his rights are denied as being projected. Further, it is averred that it is not correct to say that the resolution of the Food Advisory Committee was not taken. The Food Advisory Committee at Municipal level had already opined that the card holders attached to Fair Price Shop in question are facing much difficulty in drawing monthly quota from the shop in question as a huge number of cards are tagged on to it and finally passed a resolution on 28-2-2006 to bifurcate the shop in question into four shops as 27, 27A, 27B and 27C in the interest of the administration and card holders. The bifurcation of the shop was done in accordance with Rules in force and in good faith to relieve the card holders from the difficulties in receiving the essential commodities. The allegations leveled by the petitioner are baseless. Further, the present Tahsildar (the 4th and the 5th respondents) had been working since 2004 only, but the petitioner attributed allegations for the period since 1984. There is no interference of the 6th respondent in the bifurcation of the shop. The Revenue Divisional Officer, Kavali-3rd respondent had passed orders converting the existing Kerosene Nominated Retailer to regular Fair Price Shop Dealer as per the Rules

in force and the economic viability. The petitioner was retained as the dealer for Shop No.27 among the bifurcated shops with 504 white cards, 39 AAY cards, 2 Annapurna cards and 167 pink cards. The allotment made to him is a little more or less on par with most of the other dealers in Kavali town. The number of below poverty line ration cards tagged on to the Fair Price Shops in Kavali town is ranging from 178 and thus the petitioner is not deprived of his dealership/livelihood. Further, the contention of the petitioner that the Shop was bifurcated ignoring the economic viability is not correct for the aforesaid reasons. This Court in W.P.No.475/2007 by the order dated 3-4-2007 observed that the Public Distribution System is the prime agenda of the scheme and distribution of essential commodities in an atmosphere of equilibrium in the village is a relevant administrative concern which cannot be questioned on the ground that the petitioner would be left with an unviable number of cards and ordered that if the petitioner feels that the number of cards allotted after bifurcation makes the pursuit of the business unviable, he is at liberty to surrender the authorisation. Further, this Court in W.P.No.12110/2004 by the order dated 20-6-2005 observed that if the Government had decided to reduce the number of cards to a dealer, the Fair Price Shop

dealer cannot question the same. Further, a Division Bench of this Court in W.A.No.454/91 had observed as follows:

> "We do not see any reason to interfere with the order appeal. Out of 695 cards originally allotted to the Fair Price Shop of the appellant, 370 cards were allotted to another shop and 325 cards were retained with the appellant. The order passed by the District Collector on 22-2-1991 effecting the bifurcation had taken into account all the relevant aspects. The learned Single Judge has, therefore, rightly declined to interfere with the administrative order which does not suffer from any illegality. We, therefore, confirm the view taken by the learned Single Judge and dismiss the Writ Appeal".

Further, the process of registration and issuance of new ration cards in Kavali town was completed by the month of January 2006 and therefore there is no violation of any instructions issued by the Government. The orders of the 3rd respondent were implemented and allotment of essential commodities was made in favour of the 6th respondent for the month of May 2007 and he had been distributing the essential commodities. Subsequently, this Court passed interim orders suspending the orders of respondents 1 to 3. It is further stated that Shop No.27 was bifurcated duly following the procedure in vogue as detailed supra. The bifurcation of the shop will provide

livelihood to three more unemployed youth and there is no violation of principles of natural justice in the instant case. This is the stand taken by respondents 1 to 4 in the counter affidavit, no doubt, which was sworn to by the 4th respondent in his official capacity.

**5.** In his personal capacity as 5th respondent, a counter affidavit was filed, no doubt represented by a different Counsel and it is needless to say that the same is in accordance with law. It is averred that as mentioned in the counter affidavit filed as 4th respondent, in the year 2005 before issuance of computerized ration cards, there were 961 white cards issued to the people under below poverty line and 121 issued under Anthyodaya Anna Yojana, making a total of 1082 and after issuance of the computerized cards it had gone upto 2013 and 155 respectively making a total of 2168 and thereby there was increase of cards of more than 100% in relation to Fair Price Shop No.27 in Block of 11-33, Vengalaraonagar of Kavali Municipality. Therefore, it became necessary in the interest of justice and public convenience to bifurcate the shop as envisaged under Law. It is also averred that there was absolutely no reason for the Mandal Revenue Officer-4th respondent and the 5th respondent to collude with the 6th respondent. A mere reading of the petitioner's

affidavit would clearly show that there was consistent clash in between the writ petitioner on one hand and the 6th respondent on the other for capturing the Fair Price Shop Dealership for more than two decades. It is further stated that the 5th respondent had taken charge as the Mandal Revenue Officer, Kavali on 6-2-2004 and there is no necessity to the 5th respondent to support either the petitioner or the 6th respondent. It is also further averred that it is utter falsehood to state that the 5th respondent had taken steps to get the resolution recorded by the Food Advisory Committee and that he had handed over the register to the 6th respondent to facilitate him to obtain the signatures of the Chairman, Kavali Municipality who is one of the members of the said Committee. It is further averred that there was 100% increase in the number of ration cards in Shop No.27 and as the quantity to be distributed became more large, the distribution of essential commodities is getting slowed down and as the card holders are facing much difficulties to draw monthly quota in time and further as complaints are being received from the card holders on this issue, Fair Price Shop No.27 is necessitated to be bifurcated in the interest of public and proposals were submitted. In G.O.Rt.No.714, Food and Agriculture Department, dated 16-6-1983, the Food Advisory Committees had been reconstituted and at para-

4 it envisages Taluk Food Advisory Committee with the Revenue Divisional Officer as the Chairman, Tahsildar as the Convenor and other members of political parties of various hues and five more nominated members from the general public. In short, the Committee shall be responsible for supervising the distribution of essential commodities, advise the Chairman for constitution of additional Fair Price Shops genuinely required, among other things. Paras 8 and 9 of the said proceedings envisage Appeals against the orders passed by various authorities, Commissioner of Civil Supplies and then Revision to the Government. It is further averred that for the purpose of bifurcation of the Fair Price Shop in question, the Taluk Level Food Advisory Committee convened a meeting on 28-2-2006 and unanimously resolved to divide Shop No.27 into four shops i.e., 27, 27A, 27B and 27C. The meeting was convened at the office of the Mandal Revenue Officer. The resolution speaks that out of 27 ration shops in Kavalu Municipality and after issuance of computerized ration cards in Shop Nos.1 to 26, cards relating to below poverty line were ranging from 160 to 1145. Shop No.27 alone is having 2168 below poverty line cards and 668 pink cards. It is further mentioned whereas shop Nos.1 to 26 are being

allotted 2,11,866 Kgs. Of PDS rice, for Shop No.27 alone 35,295 Kgs. of rice is being allotted. In other words, Shop No.27 will be getting almost 1/6th of total of PDS rice. In the light of the circumstances, as the shop cannot be conducted by a single dealer and as the card holders are facing grave inconvenience, Shop No.27 should be split into shop Nos.27, 27A, 27B and 27C i.e., in total four shops. The said resolution had been unanimously passed and signed by 10 participant members, including the 4th respondent in the capacity of Convenor. It is further averred that it is absolutely false for the petitioner to contend that there was no such resolution at all passed and splitting up of the shops did not come up for consideration at any time before the Food Advisory Committee and consequently the procedure required under the Law had not been followed. It is further stated that along with the reply affidavit filed by the petitioner, a letter had been filed as if two persons by names A.Varalakshmi and B.Srinivasa Rao gave that letter to the effect that they had not attended the aforesaid meeting of the Food Advisory Committee held on 28-2-2006 and the above issue was not discussed and the Mandal Revenue Officer sent the Minutes Book through a Peon and Sri Radhakrishnaiah asked them to sign and thinking that it is a routine meeting affair they signed without noticing the

contents of the resolution drafted on that date. It is further averred that the said document is a fabricated one and the aforesaid two persons had very much signed on the resolution dated 28-2-2006. The said two persons are giving affidavits as to the truth of the said meeting and their signing on the resolution and if the same is perused, it would disclose the height to which the petitioner can go and it would also prove the nature of the person. It is also averred that it may also be appreciated that whereas in the main Writ Petition at para-12 it is stated that no such resolution was passed by the Food Advisory Committee on 28-2-2006, when it came to the reply affidavit, a diversion is made and there is clear admission of passing of the resolution dated 28-2-2006 for splitting up of Fair Price Shop No.27. After the resolution dated 28-2-2006 had been passed for splitting up of Fair Price Shop No.27, the 5th respondent submitted proposals to the 3rd respondent-Revenue Divisional Officer on 28-3-2006 detailing all the required statistics. The 3rd respondent after forwarding the proposals to the District Collector-1st respondent, called the Tahsildar-4th respondent to obtain a resolution from new Food Advisory Committee. The proposed meeting on 9-1-2007 did not take place as the political parties had not finalized their respective members

in the Food Advisory Committee. The said fact was brought to the notice of the Revenue Divisional Officer-3rd respondent. In the light of the same, what all stated in the reply affidavit of the petitioner is distortion of facts and intended to malign the entire proceedings. It is further averred that writ petitioner sought to project that the 5th respondent had surprised the shop of the petitioner and filed case under Section 6-A of the Essential Commodities Act and on his influence the Joint Collector-2nd respondent passed confiscation orders and the said allegations are not correct. It is further averred that a thing like a Tahsildar influencing a Joint Collector will not take place and such a comment is meant to prejudice all the concerned and on a mere request of the Mandal Revenue Officer-4th respondent, the 2nd respondent-Joint Collector will not pass orders of confiscation and there is no justified reason mentioned for doing such an act. Further, the allegation that the 6th respondent had been appointed without following the procedure and that the 5th respondent had suppressed the Circular dated 31-5-2005 and thereby committed contempt and perjury is not correct. There is clear misinterpretation of the words “contempt and perjury”. Even if the entire allegations are believed, there is no contempt and perjury. Further, specific stand had been taken that the 5th respondent

had not submitted any proposals to the 3rd respondent-Revenue Divisional Officer in relation to the appointment of A.Radhakrishnaiah-6th respondent as Fair Price Shop Dealer for the newly constituted Fair Price Shop No.27C. The 3rd respondent-Revenue Divisional Officer himself as per the proceedings document filed by the petitioner at page-50, the Revenue Divisional Officer himself happened to consider the Circular dated 19-3-2007 issued by the Commissioner of Civil Supplies and appointed the 6th respondent as Fair Price Shop Dealer for Shop No.27C by means of converting him from kerosene dealer to Fair Price Shop Dealer. The District Collector-1st respondent made certain observations with regard to the 6th respondent in his proceedings dated 17-3-2007. It is also further stated that there is no part played by the 5th respondent in the appointment of A.Radhakrishnaiah as Fair Price Shop Dealer of Shop No.27. The 3rd respondent himself had considered the Circular dated 19-3-2005 and there is no mention about the Circular dated 31-5-2005 and for that the 5th respondent cannot be found fault. At any rate, there is no perjury or contempt committed by the 5th respondent. Even otherwise, the Circular dated 31-5-2005 furnished by the petitioner is only a further Circular in relation to the

conversion of kerosene shop dealer to Fair Price Shop Dealer in regard to basic qualifications such as pass in X Class, age and other eligibilities. It is further stated that yet another fresh directions had been given by the Commissioner of Civil Supplies in CCS Ref.No.N5/10427/2005 dated 22-7-2005 to the effect that the Federation of A.P. Kerosene Dealers made a representation on 4-7-2005 to convert the nominated retailers (NRs) to the Fair Price Shops dealers as it is without any conditions and the said representation was requested to be considered by the Collectors and the Chief Rationing Officer, Hyderabad, keeping in view the ground reality and offer their remarks in the matter urgently. Further, the appointment of the 6th respondent by the 3rd respondent is totally within the province of the 3rd respondent and there is no part played by the 5th respondent in the appointment of the 6th respondent and the 5th respondent had not strayed beyond the circumference of Law and nothing had been done constituting contempt of Court or the offence of perjury. Further, the petitioner tried to canvas that in spite of increase in the number of ration card holders, he had been conducting the business without any dissatisfaction of the card holders and the said allegation is totally far from truth. It is further stated that on 4-11-2006, one

Pasupuleti Penchalaiah, Convenor of Kavali Pattana Pedawada Sankshema Sangham made serious allegations with regard to the manner in which the essential commodities are being distributed by the dealer of Fair Price Shop No.27 i.e., the petitioner and it had also appeared as a news item in a vernacular daily Vaartha on 5-11-2006 with regard to the mismanagement of the petitioner. As the petitioner failed to submit backlog particulars i.e., non-distribution of ration within the dates stipulated to the card holders, the 5th respondent surprised the Shop on 1-11-2006 and found violations and variations and submitted Section 6-A report as mentioned aforesaid. The petitioner himself admitted the appearance of the news item in Prajasakthi and the petitioner is trying to explain away the same in an unsatisfactory way as to the appearance of the said news item. It is also further stated that the petitioner in his reply counter affidavit wanted to impress that there are five more bigger Fair Price Shops than the Fair Price Shop now being split i.e., Fair Price Shop No.27 and they are Shop Nos.1, 11, 13, 22 and 23 and he also averred that allotment of rice is more than 11 tonnes to each of those Shops and even then there is no such proposal to bifurcate the said Shops, which is totally false it the same

is far from truth. It is stated that Shop No.27 being handled by the petitioner when it was not split up was being allotted 34 tonnes of rice whereas Shop No.1 with 12.5 tonnes, Shop No.11 with 14.5 tonnes, Shop No.13 with 16.9 tonnes, Shop No.22 with 13.5 tonnes and Shop No.23 with 10.7 tonnes. Therefore, none of the Fair Price Shops mentioned by the petitioner are being allotted rice and other commodities more than the allocation or allotment of rice etc., to Fair Price Shop No.27 and the said allegation is simply made to attribute malafides to the 5th respondent as well as the other respondents. It is also further stated that even if the aforesaid allotments had been taken into consideration, Shop No.27 certainly requires split up to bring average essential commodities distribution among the people for their bifurcate and for the effective running of the system itself. As per the Circular of the Commissioner of Civil Supplies dated 25-2-2006, there is ceiling of 500 pink and white cards for Fair Price Shops in Urban and Rural areas and 350 white cards for shops in Hyderabad District. In strict compliance of the said ceiling, after computerization of ration cards which had been completed in Kavali way back in the year 2005 itself, Shop No.27 being handled by the petitioner, he got 2838 ration cards and on rational distribution of 500 for each Fair Price Shop in Urban and Rural areas, creating

four shops in the place of Shop No.27, the same is totally justifiable and no malafides can be attributed to any Government agency. Even after creation of four Fair Price Shops still a few ration cards will be more than the ceiling number of ration cards to be handled by these Fair Price Shops on average. It is also further stated that the writ petitioner is in the habit of filing series of Writ Petitions for the last many years either by himself personally or through his father and a reading of the Writ Petition itself would disclose the habit of the writ petitioner. It is also further stated that as per the Rules framed in G.O.Rt.No.714 constituting Food Advisory Committee dated 16-6-1983 as well as under the provisions of the Essential commodities Act and general law as against the orders of the Revenue Divisional Officer an Appeal lies to the Joint Collector and a Revision to the Commissioner of Civil Supplies. Further as against the orders of the District Collector viz., splitting up of the Shop No.27, an Appeal lies to the Commissioner of Civil Supplies and further Revision to the Government and these remedies had not been exhausted and the Writ Petition is premature on that score. It is stated that the Writ Petition itself is not maintainable for various reasons. The Writ Petition is filed to declare (i) the proceedings of the District Collector-1st

respondent passed in Rc.E.No.822/2006 dated 17-3-2007 whereunder the District Collector, Nellore ordered splitting up or bifurcation of Fair Price Shop No.27 of Kavali into four shops i.e., 27, 27A, 27B and 27C; (ii) the proceedings in Rc.No.B.1672/06 dated 3-4-2007 whereunder the 6th respondent-A.Radhakrishnaha had been appointed by the Revenue Divisional Officer, Kavali-3rd respondent as Fair Price Shop Dealer of Shop No.27C; (iii) the proceedings in issuing the notification in Reference Rc.B.3131/2006 dated 16-4-2007 whereunder the Revenue Divisional Officer, Kavali-3rd respondent calling for applications for appointment of dealers for the new shops constituted i.e., 27A and 27B as ab-initio void, illegal, arbitrary, malafide and violative of the principles of natural justice. The Writ Petition can be filed for only one relief and the three reliefs sought for are squarely different and distinct and causes of action are also different and hence a single Writ Petition is not maintainable.

**6.** The 6th respondent filed a counter affidavit stating that in reply to the allegations made in paras 3 to 6 of the affidavit, it is true that the 6th respondent and the writ petitioner were appointed as Fair Price Shop Dealers for Shop No.19 by splitting the said shop into two. The 6th respondent was allotted 500 cards i.e., from Sl.No.1 to 500 whereas the petitioner was allotted the remaining

cards from serial No.501. It is not true to say that ultimately the said litigation culminated in the Judgment of this Court dated 6-7-1984 in W.P.no.13887 of 1984. No Writ Petition with the above number was filed by either the writ petitioner or the 6th respondent. An Appeal was filed before the Joint Collector against the orders of the Revenue Divisional Officer appointing two persons for Shop No.19. The Joint Collector set-aside the order of the Revenue Divisional Officer on the ground that the Revenue Divisional Officer was not competent to create a new shop and remanded the case to fill up the vacancy by issuing fresh notification. Aggrieved by the same, the writ petitioner filed W.P.No.10681/84 and the 6th respondent filed W.P.No.10704/84 and this Court was pleased to dispose of the said Writ Petitions by a Common Order dated 14-6-1988 and therefore it is clear that the contention of the petitioner that W.P.No.13887/84 was filed and the same was disposed of by an order dated 6-7-1984 is not correct. It is relevant to mention here that during the pendency of the above said Writ Petitions, this Court was pleased to grant interim orders and accordingly they were continued to function as Fair Price Shop Dealers till 30-4-1989 on which date the District Collector, Nellore appointed the writ petitioner on

temporary basis. Further, it is not correct to say that the inspection by the Vigilance Department on 17-3-1993 was made on the basis of several complaints lodged by the 6th respondent and the said allegation is false, baseless and concocted. It is not correct to state that the petitioner had been distributing the commodities without any complaint or blemish. Several complaints had been made by the card holders to the authorities to take against the petitioner as he is not distributing the commodities properly to the card holders, but no action had been taken against the 6th respondent as he is more influential being a son of a retired Revenue employee. The allegations made in para-7 of the affidavit are concocted for the purpose of the Writ Petition. It is stated that the shop in question which was shop No.19 earlier was bifurcated in the year 1993 by the Joint Collector, Nellore into three shops on the ground that the cards allotted to the said shop are more in number and for the convenience of proper distribution of the essential commodities to the card holders the bifurcation was necessary. Questioning the said bifurcation order, the petitioner filed W.P.No.11574/1993 on the ground that the Joint Collector, Nellore is not vested with the power to direct the bifurcation of the existing Fair Price Shop and opening of new shop and such power is vested with the District

Collector or the Government only and he obtained interim orders and continued to distribute the commodities for shop No.19 without bifurcation. Therefore, the allegation that in the month of September 2005, the petitioner reliably learnt that at the instance of the 6th respondent and in collusion with the 4th respondent, conceived a plan to bifurcate the shop in question is a concocted one. The further allegation that in pursuance thereof, the 4th respondent took steps in trying to get resolution recorded by Food Advisory Committee of the area and in the said process he had handed over the said records to the 6th respondent to facilitate him to obtain signature of the Chairman, Kavali Municipality who is one of the member of the said Committee is a patent lie and concocted Fair Price Shop the present Writ Petition. The meeting of the Kavali Municipality Food Advisory Committee was held on 28-2-2006 to discuss the proposals placed before the Committee to bifurcate the Fair Price Shop No.27 into four shops wherein it was clearly stated that the cards that are attached to shop No.27 alone are 2836 out of which 668 cards are pink cards and that the rice that is being allotted to shop Nos.1 to 26 is 2,11,866 Kgs. whereas the rice allotted to the shop No.27 alone is 32,295 Kgs. and hence the card holders are facing inconvenience to obtain the

commodities in time. Therefore after discussing all pros and cons of the situation the Food Advisory Committee unanimously passed a resolution accepting the proposal to bifurcate the Fair Price Shop. Accordingly, the 4th respondent had submitted his report to the 3rd respondent and the 3rd respondent after considering the same submitted his report to the 1st respondent wherein he had clearly stated that there were 1329 old cards and 1509 new cards are added totaling 2838 cards to shop No.27 and therefore it became difficult to the dealer to distribute the ration to the card holders who are mostly living by doing cooli work residing in the area of Vengalarao nagar and Tufan Nagar situated in 11-33 Block. Therefore to facilitate easy distribution and keeping in view the convenience of the card holders the bifurcation of the shop became necessary. Considering the said reports, the 1st respondent passed orders in Rc.E.822/2006 dated 17-2-2007 bifurcating shop No.27 into four shops allotting 712 cards to the shop No.27 (old shop), 909 cards each to shop Nos.27A and 27B and 708 cards to shop No.27C. Therefore all the allegations made by the petitioner in para-7 are not true and they are concocted. It is further stated that it is not correct to state that the petitioner made representation dated 9-9-2006 to various authorities. It is clear from the representation dated 9-9-

2006 that it had been filed by one I.Seetharama Rao, the father of the petitioner who is more influential having worked in the Revenue Department (R.D.O's office) and retired as a Lower Division Clerk and he is behind the entire litigation. Though the shop in question was bifurcated in the year 1993 by the Joint Collector, Nellore, the same was not given effect to on the ground that Joint Collector has no authority to bifurcate the Fair Price Shop and using his influence he successfully stalled the bifurcation for 14 long years. The petitioner being Fair Price Shop dealer is not eligible for grant of white card, but he obtained white card to his family with bearing No.W.A.P.0981027A0031 and also to his brother's family with card number No.W.A.P.0981027C0310 using the influence of his father and it is clear from the above how he manages the things in his favour. It is also further stated that it is not true to say that basing on the representation of the 6th respondent, the respondents 3 and 4 had submitted reports for dividing the shop in question into four shops. As aforesaid, the bifurcation orders were issued by the 1st respondent as there is necessity to bifurcate the existing shop which has 2838 cards and the quantity of allotment to the said shop is 1/6th of total quantity of essential commodities allotted to

other 26 shops in Kavali Municipality. Taking into consideration all the aforesaid facts, the bifurcation orders were passed and as the 6th respondent is a conventional kerosene dealer, a direction was issued to consider the allotment of one of newly created shops to the 6th respondent as per the Government instructions and the orders of this Court. Therefore, there is no irregularity and illegality in the order passed by the 1st respondent. Further, it is no longer res integra that no notice is required to be issued to the existing Fair Price Shop dealer while bifurcating the Fair Price Shop. The order of the 1st respondent is within the norms and the guidelines prescribed in Government Memo No.148/CS.I/99-1, Food, Civil Supplies and Consumer Affairs (CS.I) Department dated 22-1-1999. It is also further stated that as aforesaid, the Food Advisory Committee met on 28-2-2006 and considered all the aspects of public distribution and necessity to bifurcate the shop No.27 which has the allotment of 1/6th of the total commodities that is being allotted to the other 26 shops in Kavali Municipality and passed a resolution unanimously accepting the proposal of bifurcation of Fair Price Shop No.27 into four shops and hence it is clear that the bifurcation is made as per the procedure and the allegations made in para-12 of the affidavit are not correct. It is also further stated that it is

not true to say that the 4th respondent had initiated the whole affair in collusion with and at the instance of and to unlawfully benefit the 6th respondent. The writ petitioner without any basis had attributed malafides against the 6th respondent and the 5th respondent which are unsustainable. It is further stated that initially, the cards that were allotted to shop No.19 (new shop No.27) were 900 and odd and thereafter the number was increased to 1329 and not it is increased to 2838. The total number of white cards (rice cards) in Kavali Municipality is 14,780 out of which 2,170 cards are attached to shop No.27. Therefore it is clear that nearly 1/6th of the cards are attached to one shop and the remaining 12,610 cards are attached to 26 shops. There are shops which have 160 cards and whereas the writ petitioner by the influence of his father got the allotment of 2838 cards and successfully stalled the bifurcation for 14 long years. It is also further stated that as the 6th respondent had been functioning as Kerosene dealer, the age limit is not applicable to him. The 6th respondent had passed matriculation which is equivalent to 10th Class and he had submitted the same to the 3rd respondent. The proposal to bifurcate the shop in question was under consideration since 1993 and the Food Advisory Committee passed a resolution on 28-2-

2006 and the official respondents had considered the entire issue and the 1st respondent passed the orders to bifurcate the shop and therefore there is no illegality and irregularity in the said order. Further, the conversion is made as per the guidelines issued by the Government and following the orders of this Court. It is also not true to say that the shop of the petitioner is within a kilometer of all the card holders who are attached the shop. The card holders attached to the shop are spread over to a distance of 2 K.Ms. and moreover not only the distance but also the number of cards attached to the shop is the criteria for bifurcation. The petitioner had made all irresponsible and baseless allegations against the respondents 5 and 6. Further, it is stated that the 5th respondent has nothing to do with the bifurcation or the conversion of the 6th respondent as Fair Price Shop Dealer. The distance between the 6th respondent's shop and the petitioner's shop is more than ½ K.M. and there is no bar to allot one of the shops bifurcated to the person residing in the same ward. Further, it is stated that it is not true to say that the respondents ignored the economic viability of the Fair Price Shop in question while initiating the impugned action. The economic viability was considered by the Government and the guidelines are issued in Memo No.148/CS.I/99-1, Food, Civil Supplies

and Consumer Affairs (CS-I) Department dated 22-1-1999 stating that there shall be 500 cards to each Fair Price Shop in Urban areas, whereas in the present case after bifurcation the petitioner is allotted 712 cards. Therefore, there is no economic unviability. While calculating the profits, the petitioner did not show the amount that would fetch him in selling the gunny bags in which the commodities are supplied to him. As per the statement of the petitioner, he will get 705 gunny bags for rice and 20 gunny bags for sugar. In addition to the same, the petitioner will also get the wheat bags and so by selling all the gunny bags he gets more than Rs.9000/- per month. The expenses that had been shown are exaggerated and therefore the bifurcation is as per the viability and the guidelines and there is no arbitrariness in bifurcating the shop in question. Further, the process of registration of new cards was completed long back and he got 2838 cards after the new cards are issued. Therefore the alleged Circular dated 25-2-2006 has no application to the present case. It is further stated that the authorisation was issued to the 6th respondent on 2-5-2007 and he paid the requisite amount in E.Seva as per the allotment made to his shop on 5-5-2007 and thereafter the stocks are supplied to the 6th respondent for month of May 2007 and

he had been distributing the same to the card holders. Therefore, the contention of the petitioner that the stocks are not allotted to the 6th respondent is not correct. The petitioner had obtained interim orders on 9-5-2007 from this Court by which date authorisation was issued to the 6th respondent and the cost of the stocks was paid in E.Seva as per the allotment order given to E.Seva. The stocks were delivered at the 6th respondent's shop in the morning hours of 10-5-2007 and he had been distributing the commodities. While so on 23-5-2007, the 4th respondent had issued a notice to the 6th respondent to handover the sales register, the balance stock and the coupons etc., to the Mandal Revenue Inspector-II, Kavali, Nellore District and under the said circumstances if the interim order is not vacated, the 6th respondent will be put to irreparable loss and hardship. This is the stand taken by the 6th respondent.

**7.** A reply affidavit was filed by the petitioner to the counter affidavits filed by respondents 1 to 5 and the 6th respondent and an additional reply affidavit also was filed.

**8.** W.P.M.P.No.17782/2007 was also filed praying for a direction directing the Registrar(Judicial), High Court of A.P. to lodge criminal complaint against the 5th respondent for committing the offence of perjury and

pass such other suitable orders. In the reply affidavit and also the additional reply affidavit, virtually again the same submissions had been reiterated and certain further details had been given. In the reply to the averments made in paras 3 to 5 of the affidavit filed in support of the Writ Petition, it is stated that it is true that the cards are increased from 1082 2168 and in the year 2005 when computerisation took place and new cards were issued, the applicants who were seeking new cards were asked to file their declarations as to which shop they would like to opt for taking the essential commodities. Almost all the applicants had submitted declarations opting for the shop in question and the same speaks volumes about the quality of service being rendered by the petitioner in the shop in question and the petitioner prepared is prepared for any Advocate-Commissioner to be appointed at his costs for the purpose and to submit a report to this Court. It is also further stated that in the very same allotment made in the year 2005, the increase in cards with respect to neighbouring shops when compared to the Shop in question is much low and it is because of quality of service being rendered by the petitioner. In so far as the stocks of May 2007 is concerned, the stocks of three shops namely 27, 27A and 27B had been lifted by the

petitioner on or around 10-5-2007 whereas the stocks of Shop No.27C had been lifted by the 6th respondent on 10-5-2007 that too after receipt of the wire orders by the 4th respondent. The entire stocks given to the petitioner were distributed by 26-5-2007 whereas 8 tonnes of rice and 5 quintals of sugar supplied to the 6th respondent towards the month of May 2007 could not be distributed. The 6th respondent is yet to distribute about 7 tonnes of rice, out of 8 tonnes of rice and 3 quintals of sugar out of 5 quintals of sugar and this fact also proves beyond doubt the quality of service rendered by the petitioner and disproves the statements of the 4th respondent that because of large quantities, the petitioner is slow in distribution and that the bifurcation of the shop was taken up in the interest of public and for public convenience. It is also further stated that even with respect to the stocks of June 2007 supplied to the petitioner on 14-6-2007, 27.985 tonnes of rice out of 34.6 tonnes had been distributed. It is also relevant to note that the card holders take their stocks between 20th and 30th of every month. Out of almost all shops in Kavali Town, the petitioner's shop is the only shop running in the portion of the same building in which the petitioner's family resides. It is also stated that the petitioner keeps open his shop through out the week during working hours

of the shop except Saturday which is a holiday for Fair Price Shops unlike all other shops. It is also evident from the records that the residents of their neighbouring areas also had opted for the petitioner's shop though they fall within the jurisdiction of other shops and though they are far away. It is also further stated that the 4th respondent had suppressed the material fact that Kavali Town has five other big shops viz., Shop Nos.1, 11, 13, 22 and 23 similar to the petitioner's shop whose allotment of rice is more than 11 tonnes of rice and that even then there is no such proposal to bifurcate the said shops and this very fact proves beyond reasonable doubt that the action of the 4th respondent is purely mala fide and the impugned action had been resorted only to satisfy the 6th respondent's illegal desires. It is also further stated that though it is true that large quantities of essential commodities are being distributed through the shop in question, it is only in comparison with other shops. The allotments and the cards of the other shops had been reduced to such low levels because of bifurcations and these bifurcations had been resorted not in the interest of public but in the interest of political pressures which is quite prevalent in Fair Price Shop appointments and the resultant issue of authorizations. The records with respect

to bifurcation would reveal the veracity of the contentions of the petitioner. The allegation that because of the quantities the process of distribution in the shop in question had slowed down is absolutely false and the said averment is made only to cause prejudice against the petitioner and to justify the impugned mala fide action of the respondents. Except the said bald statement, there is no material produced or available in the record to substantiate the same. It is also false to contend that there are complaints against the petitioner with respect to the distribution of the stocks and the respondents are put to strict proof of the same. On a request under Rule 15 of the Writ Proceedings Rules, the Counsel for petitioner had perused the records of the office of the 1st respondent, 4th respondent and the Minutes of the Food Advisory Committee. The records disclose not a single complaint from any corner except the interpolations to the said effect by the 5th respondent in various proceedings. The averment in the counter affidavits that the principle of natural justice had not been violated, appears to have been made keeping in view the Judgments of the Apex Court. The issue of principles of natural justice, fairness even in administrative actions had not fallen for consideration in the said case and the principles in this

regard were laid down by the Larger Benches of the Apex Court and they were not brought to the notice in the said case and therefore the said Judgment on the face of the Judgments of Larger Benches cannot be relied upon by the respondents. The respondents 1 to 3 are put to strict proof of the averment that they had considered the public interests while accepting the proposal of bifurcation in question. On the contrary, the entire record only evidences that the proposal was taken only at the instance of the 6th respondent that too placing wrong reliance on the orders of this Court in W.P.No.13095/2006 and also the Circular dated 19-3-2005. It is further stated that the Judgment in W.P.No.13095/2006 had been rendered basing on the Judgment dated 3-3-2006 in W.No.3015/2006. From a perusal of the said Judgments, it is evident that this Court only directed the conversion of the nominated dealers as Fair Price Shop Dealers in accordance with the policy of the State Government. As per the policy of the Government which is evidenced from the Circular dated 19-3-2005 and also from 31-5-2005, such conversion is permissible provided the nominated retailer is eligible as per the qualifications prescribed. The 4th respondent had purposefully and with an ulterior motive suppressed from the respondents 1 to 3

and also from this Court the Circular dated 31-5-2005 which was communicated to all the Collectors, Chief Rationing Officer and all the District Supply Officers. This Court in more than one Judgment categorically held that suppressing a material fact from the Court not only amounts to playing fraud on the Court but also constitutes contempt and the offence of perjury and hence the petitioner prays this Court to direct the Registrar (Judicial) to lodge a complaint against the 5th respondent for committing perjury and prosecute the same. The 4th respondent had filed counter not only on his behalf, but also on behalf of the respondents 1 to 3 and thus putting the said respondents also in unnecessary risk of facing perjury. The 5th respondent who is the deponent had suppressed the said fact from the respondents 1 to 3 in order to benefit the 6th respondent as the 6th respondent as otherwise by virtue of the Circular, would not only becomes ineligible but the very proposal of bifurcation would not have emanated and the respondents 1 to 3 would not have accepted the same. It is further stated that the 4th respondent had not denied the averments made by the petitioner in the affidavit that the 5th respondent in collusion with the 6th respondent had

resorted to the impugned action and therefore it is malafide one. The 4th respondent is trying to hoodwink by stating that the same are not relevant. Therefore, by the principles laid down by this Court and the Apex Court with respect to pleadings, the allegations of malafides alleged by the petitioner stood proved against the 5th respondent. It is further stated that the petitioner's Counsel had made a request under Rule 15 of the Writ Proceedings Rules by his letter dated 19-6-2007 for perusal of the records and he was permitted to peruse the records of the offices of the 1st and the 4th respondents pertaining to the bifurcation but not the note files. The Minutes Book of the Food Advisory Committee lying with the 4th respondent was produced and note file connected therewith. It is relevant to mention here that if the said resolution had been passed then the question of the 4th respondent issuing another notice dated 6-1-2007 for convening a meeting of the Food Advisory Committee for 9-1-2007 with the Agenda for the same purpose would not arise and hence it is clear that the resolution dated 28-2-2006 was brought into vogue by the 5th respondent only for ulterior motive. The alleged resolution dated 28-2-2006 is not valid in law and contrary to the instructions issued by the Government in this regard. It is also further stated that the

allegation that the cards have increased abnormally and therefore the shop had been bifurcated in public interest is false for the reasons aforementioned. There is no semblance of enquiry as to the need, benefit or in public interest to resort to the impugned bifurcation of the shop in question except the blanket statement interpolated in various proceedings and repeatedly being made by the 4th respondent though it is blatantly evident from record and the orders that it is resorted only to benefit the 6th respondent and hence this Court may direct the issue in question to be placed before a validly constituted Food Advisory Committee for proper consideration of the same and take all further steps as required. It is further stated that the petitioner has got a right to call upon the official respondents to act fairly, not to resort to actions which are contrary to the object to be achieved, to act objectively and not subjectively and not to act arbitrarily. As a citizen, the petitioner is entitled to claim the said aspects as a matter of right though the petitioner does not have a right to claim that the shop in question should not be bifurcated. Further, if the respondents act contrary to the aspects referred to supra, it amounts to arbitrary and discriminative action thus violating the petitioner's right under Article 14 of the Constitution of India. From the

facts aforementioned, it is evident that the action of the respondents is not only not in furtherance of the object for which such an action should be resorted against the interest of the card holders of the petitioner's shop but also arbitrary and is subjective and mala fide. As per the guidelines, it is for the Food Advisory Committee to assess and decide the genuinity and necessity for bifurcation and thus forming a new shop. It is further stated that the previous inspection is a subject matter of enquiry under the Employees Commodities Act and also W.P.No.26004/2006. It is further stated that having received the order in the Writ Petition on 10-5-2007, the petitioner reliably learnt that the 4th respondent personally approached the 2nd respondent with the file pertaining to the said case and insisted him to pass orders of confiscation of the entire stocks seized in order to wreak vengeance and threaten the petitioner. Acceding to the said request, the 2nd respondent had straight away passed the orders on 13-5-2007 confiscating the entire stocks without issuing the mandatory show cause notice under Section 6(B)(1a) of the Essential commodities Act and without considering the connected facts. The petitioner filed Appeal (C.F.No.4824/2007) on 16-6-2007 against the said order before the District Judge, Nellore

under Section 6-C of the Essential commodities Act. With regard to the news item in Praja Sakthi News paper, it is stated that the local reporter approached the petitioner for donation towards construction of some building which the petitioner refused and therefore he published an article in the news paper with false and incorrect statements. In any event, the said article does not disclose any complaint by any of the card holders against the petitioner. It is further stated that the primary consideration which needs to be kept in mind in case of bifurcation is the interest of the card holders and the allegations made in para-9 have no relevance with respect to the said aspect. The facts mentioned supra clearly demonstrate that the bifurcation of the shop in question is not in the interest of the card holders and in any event all these aspects are required to be considered by a validly constituted Food Advisory Committee and not by the respondents 1 to 4. The petitioner would abide by the decision of the competent authority in this regard i.e., Food Advisory Committee constituted validly as per the instructions of the Government now holding the fields. It is also further stated that except the oral statements of the 4th respondent, there is no material to prove that the card holders of the petitioner's shop are put to difficulties in

drawing monthly quota. The impugned action is mala fide and the 5th respondent had been made part in person and it is for the 5th respondent to file his counter and submit his reply. The respondents 1 to 4 had not denied the specific averments made by the petitioner about the ineligibility of the 6th respondent to be converted as a Fair Price Shop Dealer and at the instance of the 6th respondent the impugned action cannot be resorted to. Further, it is stated that the respondents had misunderstood the petitioner in making the allegation that the 5th respondent is only working as Tahsildar from the year 2004 and whereas the petitioner had been making the allegations from the year 1984. But, the stand of the writ petitioner taken in the Writ Petition is that the 6th respondent had been after the petitioner's shop from the year 1984 and he had been masterminding, influencing and putting pressures on the individuals manning the post of the 4th respondent to some how accommodate him and the 4th respondent had succumbed to the same and he resorted to the impugned action in collusion with the 6th respondent through the predecessors of the 4th respondent manning the said post had not succumbed to the said illegal desires of the 6th respondent. It is denied

that the 6th respondent had not interfered in the issue in question. Further, it is not correct that the 3rd respondent had converted the 6th respondent as Fair Price Shop Dealer as per the Rules. The Circular dated 31-5-2005 had been suppressed and as per the said Circular, the said conversion is not permissible. It is also stated that except a statement that the impugned bifurcation is made keeping in view the economical viability, no material had been produced nor the record discloses the said consideration. The respondents had also not denied the details of economics mentioned in para-19 of the affidavit filed in support of the Writ Petition. Further, some of tenant decisions referred to by the respondents are unreported Judgments and the copies of the same are not furnished to the petitioner. In spite of the oral request made by the petitioner's Counsel, the decisions relied upon in the counter had not been supplied to the petitioner's Counsel.

**9.** Additional reply affidavit was filed to correct a mistake which occurred in mentioning the facts in paragraph 5(d) of the reply affidavit. In the said additional reply affidavit it is stated that though the allotment to the petitioner's shop is 34.7 tonnes every month, for the month of June 2007, the petitioner had been instructed to

pay only for 27.985 tonnes as the rice of 7.013 tonnes lying undistributed with the 6th respondent were intended to be supplied to the petitioner for distribution. As per the said instructions, the petitioner had paid the said amount and the stocks were released to him on 14-6-2007 and he had distributed the said rice of 27.985 tonnes by 30-6-2007.

**10.** These are the respective stands taken by the parties.

**11.** As already specified above, an application was filed praying for a direction to prosecute the 5th respondent on the ground of suppression of a material Circular and also certain averments were pointed out in the affidavit filed in support of the Writ Petition and also the way in which they have been denied or explained in the respective counter affidavits. At paragraph-7 of the affidavit filed in support of the Writ Petition, it is stated that it is reliably learnt that at the instance of the 6th respondent and in collusion with the 4th respondent, who also had been impleaded in person as the 5th respondent, a plan was conceived to bifurcate the shop in question and in pursuance thereof the 4th respondent took steps in trying to get resolution recorded by Food Advisory Committee of the area and in the said process, he had handed over the said record to the 6th respondent

to facilitate him to obtain signatures of the Chairman, Kavali Municipality who is one of the members of the said Committee. Further, the representations had been referred to and it is stated that in view of the said representation dated 9-9-2006 the 4th respondent developed animosity against the petitioner and in pursuance thereof he had inspected the shop of the petitioner on 1-11-2006 at 9 P.M. and alleged non-existing variations in stock against the petitioner and submitted a report to the 3rd respondent in this regard. It is also averred that the anxiety and the speed at which the said action was initiated also discloses the malafides of the 5th respondent for the reason that the 6th respondent is also in the same ward as the petitioner i.e., Municipal Ward No.18 and the same was completely overlooked. No doubt, certain further averments had been made in relation to influencing the higher authorities and other aspects.

**12.** The details of the counter affidavit of the 5th respondent i.e., 4th respondent in his personal capacity, already had been referred to above. No doubt, elaborate submissions were made that an important Circular also had not been referred to, but in the light of the nature of the stand taken in the counter affidavit, though certain

submissions were made attributing malafides to the 4th respondent, impleading him as 5th respondent in his personal capacity, the writ petitioner was not successful in discharging the required burden expected to be discharged in establishing the plea of malafides. It is no doubt true that when specific allegations are made against an Officer depending upon the gravity and the nature of the allegations made, when such Officer is impleaded both in his official capacity and personal capacity, it may be that in his official capacity, an affidavit may be sworn and in his personal capacity, a counter affidavit to be filed denying the specific averments relating to the malafides or the allegations made in person as against such an Officer. However, in such matters, the parties are expected to be careful and cautious and by way of abundant caution the other officers on behalf of whom the counter affidavits would be sworn in, it would be just and proper if additional and supporting facts of those officers also are filed. Suffice to state that, may be, in the light of the nature of the allegations made, the respondents 1 to 4 might have thought of the counter affidavit of the 4th respondent in official capacity and the 5th respondent in his personal capacity may be sufficient. Strong reliance was placed on **S.Pratap Singh Vs. State of Punjab** [1]

wherein at para-5 it was observed :

> "We shall now proceed to deal with the second point urged before us viz., that the order was passed mala fide and so could not be allowed to stand. Before entering into the details of the allegations made, the evidence in their support and the inferences to be drawn therefrom, we consider it useful to state the principles underlying this branch of the law. The Service Rules which are statutory, vest the power to pass the impugned orders on the Government. The expression 'Government' in the context is the functionary within the State who is vested with executive power in the relevant field. Of course, the Constitution vests the executive power in a State in the Governor but he is constitutionally directed to act on the aid and advise of his Ministers. In the case before us it is common ground that it was the Chief Minister who was incharge of the Health Department in which the appellant was employed and it was therefore the Chief Minister as the Minister in charge of that portfolio who initiated these proceedings, though the formal orders of the ministry were issued by the Secretaries etc., of the Department in the name of the Governor. For the purposes of the present controversy the functionary who took action and on whose instructions, the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by mala fides in taking that action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted that he would raise a legal contention, that

even if mala fides were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that mala fides was not made out by the evidence on record. Such an argument, if right, would mean that even fraud or corruption leaving aside mala fides, would not be examinable by a Court and would not vitiate administrative orders. As Lord Denning said in Lazarus Estates Ltd. v. Beasley 1956-1 All.E.R. 341 at p.345:

> "No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud".

In the circumstances we do not consider it necessary to deal with this aspect more fully or in greater detail."

Further, it was observed at paras 7 and 8 :

"As we said earlier, the two grounds of ultra vires and mala fide are thus most often inextricably mixed. Treating it as a question of ultra vires, the question is what is the nature of the power which has been granted to achieve a definite object in which case, it would be conditioned by the purpose for which it is vested. Taking the present case of the power vested in Government to pass the impugned orders, it could not be debated that it is vested in Government for accomplishing a defined public purpose viz., to ensure probity and purity in the public services by enabling disciplinary penal action against the members of the service

suspected to be guilty of misconduct. The nature of the power thus discloses its purpose. In that context the use of that power for achieving an alien purpose – wreaking the ministers vengeance on the officer would be mala fide and a colourable exercise of that power and would therefore be struck down by the Courts. In this connection we might cite a dictum of Lord Lindley in General Assembly of Free Church of Scotland v. Overtoun, 1904 AC 515, when the learned Lord said at p.695:

> "I take it to be clear that there is a condition implied in this case as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purposes for which they are conferred".

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may sometimes be done (See Edgington v. Fitzmaurice (1884) 29 Ch.D.459). The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting in the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that, mala fide in the sense of improper motive should be established

only by direct evidence that is that it must be discernable from the order impugned or must be shown from the notings in the file which preceded the order. If bat faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts".

**13.** Strong reliance was placed on **Ramana Dayaram Shetty Vs. International Airport Authority of India and others** [2] and also **State of NCT of Delhi and another Vs. Sanjeev alias Bittoo** [3].

**14.** Apart from the aspect of malafides, the relevant portions of the records also had been pointed out and certain of the strikings had been specifically pointed out by the learned Counsel representing the writ petitioner. Certain submissions were made that suppression of fact relating to the Circular would amount to perjury and in a way would amount to contempt. The parameters of judicial review and the relevant principles relating thereto also had been elaborated. The learned Counsel placed strong reliance on the undernoted decisions : **AIR INDIA LTD. Vs. Cochin International Airport Ltd. and others** [4], **Smt.Naseem Bano Vs. State of U.P. and others** [5], **APSRTC Vs. N.Krishna Reddi and others** [6], **Sushil Kumar Vs. Rakesh Kumar**

**[7], S.P. Chengal Varaya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others [8], In re : SUO MOTU PROCEEDINGS AGAINST R.KARUPPAN, ADVOCATE [9], M.S. Ahlawat Vs. State of Haryana and another [10], U.P. Resi. Emp. Coop. House B.Society Vs. N.O.I.D.A. [11], Murray & Co. Vs. Ashok Kr. Newatia [12], Dhananjay Sharma Vs. State of Haryana and others [13]** and **K.Yadaiah and others Vs. Government of Andhra Pradesh and others [14].**

**15.** As can be seen from the records, no doubt certain affidavits of the Committee members viz., Boggavarapu Srinivasulu and A.Varalakshmi, also had been filed who had stated that the Mandal Revenue Officer had secured the signatures through some one. On the over all appreciation of the facts and circumstances, this Court is of the considered opinion that may be that the 4th respondent in a way was anxious to see that the bifurcation is finalized since it is a long pending issue and apart from this aspect of the matter, even otherwise from the records it is clear that the role of the 4th respondent being minimal, for all the subsequent actions of the higher authorities in the hierarchy, it cannot be said that the 4th respondent alone is responsible. It is also pertinent to

note the petitioner and the 6th respondent had been fighting several litigations from sufficiently a long time and may be that in this unfortunate episode, the 4th respondent is made a scapegoat. Hence, either the 4th respondent in his official capacity and the 5th respondent in his personal capacity alone cannot be fastened with responsibility for the process of bifurcation of the shop in question.

**16.** The shop in question had been bifurcated and the decision was taken by the District Collector concerned. It is needless to say that the District Collector is not the appointing authority and no doubt the District Collector observed that the 6th respondent be appointed and may be in pursuance thereof the appointment of the 6th respondent was made to the bifurcated shop No.27C referred to supra. It is also pertinent to note that in the Food Advisory Committee the 6th respondent also is shown as one of the members and it is needless to say that it is in the decision making process and ultimately the 6th respondent is the beneficiary at least in relation to one shop i.e., shop No.27C. Be that as it may, in the nature of this proceedings inclusive of the recommendations of the said Committee as such, these appear to be guidelines advisory in nature and cannot be held to be of mandatory

character resulting in the illegality of the proceedings as such.

**17.** The Circular dated 31-5-2005 in CCS.Ref.No.N5/2847/2005 dated 31-5-2005, reads as hereunder :

Government of Andhra Pradesh
office of Commissioner of Civil Supplies, A.P.,
Hyderabad,

CCS.Ref.No.N5/2847/2005 Dated 31-5-2005

CIRCULAR

Sub:- CS-PDS-Conversion of Nominated Retailers as F.P. Shop dealers in a phased manner-Clarification-issued-Regarding.

Ref:- 1. Govt.Memo No.40829/CS.IV-1/91-1, F&A Department, dated 26-7-1991.

2. Govt.Memo No.148/CS.1/99-1.F.CS&CA(CS.I) Department, dated 22-1-1999

3. G.O.Ms.No.53, CA, F&CS (CS.1) Department, dated 6-10-2003

4. PDS II(3)/2847/2005 dated 19-3-2005

5. Lr.No.B1/1262/05, dated 16-4-05 of CRO, Hyderabad

***

Attention of the Chief Rationing Officer/Collector (CS) is invited to the references cited. In the references 1st to 3rd cited, the Government have issued guidelines for selection and appointment of F.P. Shop dealers. In the reference 4th cited, on the recommendation of the Group of Ministers, CRO/Collector (CS) have been requested to convert the retail kerosene shops into fair price

shops in a phased manner.

2. In the reference 5th cited the Chief Rationing officer, Hyderabad has requested to clarify whether a dealer of kerosene shop can be converted to F.P. Shop dealer in the absence of basic qualification such as pass in tenth class, age and other eligibilities.

3. The Chief Rationing Officer and Collectors (CS) are informed that the guidelines issued in the reference 1st to 3rd cited shall also apply while converting “retail kerosene shops” into “fair price shops”. While filling the vacancy preference shall be given to the dealer of retail kerosene shop of that particular area for appointment as F.P. Shop dealer. In addition to the above guidelines, the following additional guidelines are issued for converting the retail kerosene shop into fair price shop.

(i) The CRO/Collector (CS) shall have the bio data of dealers of retail kerosene shops comprising of

a. Name of the dealer
b. Kerosene shop No.
c. Date of Birth and age
d. Residential address
e. Shop address
f. No. of cards registered (F.P. Shop wise)
g. Community
h. Whether belong to physically handicapped/ex-service men
i. Educational qualification
j. Performance as retailer such as lifting of stocks – Distribution to the card holders – Maintenance of records etc.

k. Whether any case is pending/punishment awarded

l. Antecedents

(ii) Whenever a vacancy of F.P. Shop arises, the vacancy shall be filled in by converting the retail kerosene shop functioning in that area, if the retail kerosene shop dealer is otherwise qualified.

(iii) The nominated retail kerosene dealer may have more ration/supply cards than the F.P. shop. While converting the kerosene shop into F.P. Shop, all the other supply cards registered with the dealer of kerosene shop shall be transferred to the respective F.P. Shops except the cards pertaining to the F.P. Shop in question.

4. The Chief Rationing Officer/Collector (CS) are requested to adhere to the above instructions scrupulously and ensure no complaints of whatsoever nature are received in this regard to the chagrin of the card holders.

5. The receipt of the Circular shall be acknowledged.

Sd/-
Bhanwar Lal
Commissioner of Civil Supplies

**18.** G.O.Ms.No.7, Consumer Affairs, Food and Civil Supplies (CS.1) Department, dated 1-2-2006, reads as hereunder :

Government of Andhra Pradesh
Abstract

Civil Supplies – Food Advisory Committees at

various levels – Inclusion of representatives of the Panchayat Raj Institutions in the composition of the Food Advisory Committees, Mandal and Village Gram Panchayat Levels – Additional tasks assigned to the Committees – Orders – Issued.

***

Consumer Affairs, Food and Civil Supplies (CS.1) Department

G.O.Ms.No.7 Dated: 1-2-2006

Read the following :

1. G.O.Ms.No.93, Consumer Affairs, Food and Civil Supplies Department, dated 13-7-2005

2. G.O.Ms.No.128, Consumer Affairs, Food and Civil Supplies Department dated 6-9-2005

3. Lr.No.N-11011/1/2005-PR dated 8-9-2005 of the Ministry of Panchayati Raj, New Delhi.

4. Lr.No.8460/CPR/M2/2004 dated 22-9-05 of the Commissioner of Panchayat Raj & Rural Employment, Hyderabad.

***

ORDER:

Government have, vide references first and second read above, reconstituted the Food Advisory Committees at various levels.

The Ministry of Panchayati Raj, Govt. of the India have, vide reference third read above, requested that the Panchayati Raj Institutions should be involved so as to play an important role in bringing accountability and transparency in the Kerosene

distribution process and solicited the cooperation of the State Government in the following areas:

(a) Awareness generation amongst the elected functionaries of the PRIs about:

(i) Jan Kerosene Pariyojana and their role in the Vigilance Committees.

(ii) Government orders regarding the scheme

(iii) The Mechanism by which SKO is routed from OMS (Oil Marketing Companies) to the Fair Price Shops.

(b) Training of officials and non-official working with these PRIs about the role of the PRIs in the Jan Kerosene Pariyojana

(c) Coordination between District Supply Officers and PRIs and Panchayati Raj officials

(d) It is of essence that the PR representatives are fully briefed about the scheme and their duties.

3. Keeping in view the suggestions of the Government of India and after careful examination of the matter in consultation with the Panchayati Raj and Rural Development Department, Government, in supercession of the constitution of the District, Mandal and Village Food Advisory Committees ordered in the G.Os. first and second read above, hereby order reconstitution of the Food Advisory Committees at the District, Mandal and Village (Gram Panchayat) level as follows:

1. District Level Advisory Committee :

i. Collector Chairman

ii. Chair Person, Zilla Parsishad Co-Chairman

iii. Joint Collector Vice-Chairman

iv. All MLAs, MPs of the District Members
v. One representative from each of the recognised political parties
vi. Six members of the Zilla Parishad (out of whom three shall be women) who shall be nominated by the Zilla Parishad Members
vii. One representative from the Dist. Chamber of Commerce and Industry sponsored by the Zilla Parishad Member
viii. The District Level Coordinator for Oil Industry Member
ix. One representative of the F.P. Dealers Association Member
x. One representative of the Kerosene Retailer Dealers Association Member
xi. Five representatives of the Consumer Organisations to be nominated by the Collector Member
xii. Three representatives of the Self-Help Groups to be nominated by the Collector Members
xiii. Non-Official Members of the State Consumer Protection Council Belonging to the District Members
xiv. District Supply Officer Member
xv. Chief Executive Officer, Zilla Parishad Member-Convenor
xvi. Director of the Board of the A.P. State Civil Supplies Corpn. belonging to the Concerned District Special invitee

4. In addition to the agenda for the District Level Food Advisory Committee prescribed in the G.O. first read above, the following additional tasks are assigned for deliberation in the District Level Food Advisory Committee meetings.

i) Monitoring the publicity campaigns so as to ensure wide publicity for effective functioning of the TDPS within the District.

ii) Reviewing the implementation of the capacity building programme.

iii) Sensitizing the elected members of the Panchayat Raj Institutionsand other stakeholders of TDPS – particularly in implementation mechanism and vigilance required for the successful implementation of the TDPS.

iv) The redressal of complaints emanating from the field specially from Mandal/the Gram Panchayat levels.

v) Review to ensure the compliance of resolutions passed by the Gram Sabhas, MPPs in resects of respective Food Advisory Committees. The action taken by the Licensing authority shall be put before the Committee.

vi) To obtain information from the District Administration about the details of wholesalers and sub-wholesalers in kerosene and from A.P. State Civil Supplies Corporation/DSO about allotments of essential commodities made to Fair Price Shops and the distribution thereat.

vii) Redressal of complaints with regard to the appointment and functioning of the F.P. Shops/NR dealers in the district.

The meeting of the District Level Food Advisory Committee shall be held bi-monthly on fourth Monday.

2. Mandal Level Food Advisory Committee :

i. Revenue Divisional Officer/Sub-Collector
Chairman

ii. Chair Person of the Mandal Praja Parishad Co-Chairman

iii. One representative from each of the recognised Political Parties Members

iv. Chair Person of the Municipality Member

v. Members of ZPTC belonging to the Mandal Member

vi. Three women members of the Mandal Praja Parishad to be nominated by the Mandal Praja Parishad Members

vii. Mandal Development Officer Member

viii. One representative of the F.P. Dealers Association Member

ix. One representative of the Kerosene Retail Dealers Association Member

x. Four representatives from the Consumer Voluntary Organisations to be nominated by the Collector Members

xi. One representative of Self Help Groups to be nominated by the Collector Member

xii. Mandal Revenue Officer Member-Convenor

5. In addition to the agenda for the Mandal Level Food Advisory Committee prescribed in the G.O. first read above, the following additional tasks are assigned for deliberation in the Mandal Level Food Advisory Committee meetings.

a) To obtain information from the District

Administration/Mandal Revenue Office about the details of releases made to the PDS Kerosene Wholesalers and sub-wholesalers and to the F.P. Shops/NRs and from Civil Supplies Corporation about allotment of the other essential commodities made to the Fair Price Shops.

b) To inspect the FP shops/NRs by the team of not less than a minimum of three members of the Committee based on the authorisation to be issued by the Government under the relevant provision of the AP PSA (Control) Order, 2001 to ascertain the satisfactory delivery of the stocks to the card holders.

c) To visit the Fair Price Shops against whom the complaints are received and forward the recommendatiions to the District Level Food Advisory Committee and the Licensing authority under copy to the MRO concerned for necessary action.

d) To ensure that some members of the Food Advisory Committee are present at the time of decanting the product at the Sub-Wholesale point.

The meeting of the Mandal Level Food Advisory Committee shall be held bi-monthly on second Monday.

Village (Gram Panchayat) Level Food Advisory Committee :

i. Sarpanch of the Gram Panchayat
Chairman

ii. Member, MPTS belonging to the village
Member

iii. Six members (including at least two women) of the Gram Panchayat to be nominated by the Gram Panchayat

Members

iv. Three representatives of the Consumer Voluntary Organisations to be nominated by the Mandal Level Committee

Members

v. Three representatives of the Self-Help Groups to be nominated by the Mandal Level Committee

Members

vi. Panchayat Secretary

Member-Convenor

6. The following tasks are assigned to Village (Gram Panchayat) Food Advisory Committee :

i) The Committee will review the allotment of essential commodities made to the F.P. Shops/NRs by the MRO/Kerosene Wholesale/Sub-Wholesaler;

ii) The Committee will review the closing balance of essential commodities with the F.P. Shops/NRs at the end of the previous month;

iii) The stock received at the Fair Price Shop will be decanted only in the presence of at least two members of the Food Advisory Committee;

iv) The release of the next month's quota of the PDS Kerosene by the MRO office will be made only on the certification by the Village (panchayat) Level Food Advisory Committee of satisfactory distribution of the previous month's quota;

v) The Committee will have authority to seek written information from the F.P. Shops/NRs relating to SKO distribution and also to verify physical stock from time to time;

vi) It will receive complaints from consumers regarding non-receipt of their entitlement, short

weighment, over-charging etc. Such complaints will be recorded in complaints register maintained by the Food Advisory Committee for this purpose;

vii) The Food Advisory Committee will conduct enquiry by the team of not less than a minimum of three members of the Committee based on the authorisation to be issued by the Government under the relevant provision of the A.P.PSA (Control) Order, 2001 and forward enquiry result along with the extract from the complaint register to the Gram Panchayat for placing the matter before the Gram Sabha for public hearing; thereafter, passing a resolution on the action to be taken and forwarding the same to the Licensing authority under copy to the MRO concerned for taking action under the provisions of the A.P.P.D.S. (Control) Order, 2001 for any offences noticed and to report to them.

The meeting of the Village (Gram Panchayat) Level Food Advisory Committee shall be held on first Monday.

The composition of the Committees at other levels viz., Municipal Corporation Level, Circle Level, Division Level, Municipality Level, Ward in Municipality Level and Fair Shop (urban) level and the periodicity of the meetings of such committee and other instructiions shall be the same as indicated in G.O. first read above, as amended in the G.O. second read above.

These orders shall come into force with immediate effect.

(BY ORDER AND IN The NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Bhanwar Lal
Ex-Officio Secretary to Government

This G.O. refers to G.O.Ms.Nos.93 and 128 of Consumer Affairs as references 1 and 2 and this G.O. deals with reconstitution of the Food Advisory Committees at various levels.

**19.** The Circulars dated 22-9-1987 and also 30-9-1988 had been relied upon and the said Circulars read as hereunder :

**Circular dated 22-9-1987:**

CCS DO Lr.No.PDS.4/3377/87, dated 22-9-1987 addressed to all Collectors.

Sub:- Civil Supplies – F.P. Shops – Proposals for sanction of new F.P. Shops with few cards – Instructions issued – Reg.

Ref:- CCS Cir.No.PDS.4/1473/85 dated 9-5-1985.

***

I invite your attention to the reference cited wherein guidelines were prescribed for sanction of new F.P. Shops. However, from the proposals received from some Collectors, it is observed that sanction of new F.P. Shops are being recommended with too few cards which will not be economically viable and there is no justification to open such unviable F.P. shops. Sanction of unviable shops would only drive the dealers to indulge in malpractices.

I, therefore, request you to examine the

economic viability of both the proposed new shop as well as that of the existing shops, which is/are proposed to be bifurcated and recommend only those cases which are economically viable.

G.P. RAO
Commissioner of Civil Supplies

**Circular dated 30-9-1988:**

CCS.Circular No.PDS.4/2649/88, dated 30-9-1988 to all Collectors/CRO Hyderabad.

Sub:- Civil Supplies – F.P. Shops – Creation of additional F.P.
Shops without viability – Reg.

Ref:- 1. CCS Cir.Instruction No.PDS.1/204/82, dated 19-4-85
2. CCS Cir.Instruction No.PDS.4/1473/85 dated 9.5.85
3. CCS D.O.Lr.No.PDS.4/3377/87 dated 22-9-87
4. Note C.No.763/M (F&CS)/88 dated 27.9.88 of the Dy.Minister for F&CS., A.P., Hyderabad.

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The attention of the Collectors and Chief Rationing Officer, Hyderabad is invited to the references first to third cited, wherein it was requested to keep in view the economic viability of the Fair Price Shops while creating new Fair Price Shops or bifurcating the already existing Fair Price Shops. Instances have come to the notice of the Government that in some of the Districts, Fair Price Shops are sanctioned with less than 250 cards. It is not desirable to sanction new Fair Price Shops

unless they are economically viable. If the shop is not economically viable, the Fair Price Shop dealer would resort to malpractices.

All the Collectors and Chief Rationing Officer, Hyderabad are expected to keep in view, among other things, the economic viability of the Fair Price Shops while creating new Fair Price Shops. It is also requested to ensure that the existing unviable Fair Price Shops are made viable by attaching cards from the defunct Fair Price Shops.

If for any reason it becomes necessary to sanction an unviable Fair Price Shop, the reasons thereof shall invariably reported to Government through Commissioner of Civil Supplies.

R.KODANDARAMA REDDY
Director of Civil Supplies

**20.** The executive instructions of A.P. Scheduled Commodities (RDCS) Order 1973 dealing with sanction of new Fair Price Shops had been relied upon and the contents thereof are as hereunder :

EXECUTIVE INSTRUCTIONS
A.P. Scheduled Commodities (RDCS) order 1973
SANCTION OF NEW FAIR PRICE SHOPS

CCS.Circular No.PDS-1/204/82, dated 19-4-1985, addressed to all Collectors.

Sub:- 20 Point Programme – Target for 1985-86 – Tentative target for 2 months – Instructions issued.

Ref:- Savingram No.6035 – Plg.EP/85-2 Find. Plg (Plg.Wing) Department dated 12-4-1985 of Government of Andhra Pradesh.

***

A copy of the instructions issued in the reference cited is enclosed. The Collectors are requested to adopt 1/6th of the target prescribed for 1984-85 as the target for April and May, 1985 in respect of opening of new fair price shops, tentatively pending fixation of final targets.

At present there are 32,662 fair price shops in the State as against 27,221 villages. It is presumed that there is atleast one fair price shop in every village. However, the following guidelines are prescribed for recommending new fair price shops during the year 1985-86.

1. There must be atleast one fair price shop in every inhabited village.

2. There must be a fair price shop within a distance of 1 KM from the residence of the card holders.

3. New fair price shops may be recommended where there is justification depending on the population to be covered.

The Collectors are requested to justify places under items 1 and 2 immediately and report the number of new fair price shops to be opened before 15.5.1985 so that realistic targets could be fixed for the period from 6/85 to 3/86.

JANNAT JUSSAIN
for Commissioner of Civil Supplies

**21.** Further, Government Memo No.40829/CS-IV-I/91/1 F&A Department, dated 26-7-1991 had been relied upon wherein it was specified that Fair Price Shops should be within a distance of 1 K.M. from the

residence of the card holders. The Circular dated 19-03-2005 on which strong reliance had been placed reads as hereunder :

Government of Andhra Pradesh
Office of the Commissioner of Civil Supplies, Hyderabad-082.

No.PDS.II(3)/2847/05 Dt.19-03-2005

CIRCULAR

Sub: CS – K.oil – Conversion of nominated retailers as F.P. shop Dealers in a phased manner – Instructions – Issued – Reg.
Ref:- Recommendations of Group of Ministers.

***

Instances have come to notice that Kerosene Retail Dealers are not in a position to lift the entire kerosene at a time due to non-availability of required space for storage spending high amount resulting in non-availability of kerosene to the card holders throughout the month.

Keeping in view the unviability of the retail dealers and to make kerosene available throughout the month, on the recommendations of Group of Ministers, during the meeting held by the Hon'ble Chief Minister on 15-1-2005, a decision has been taken regarding conversion of the existing nominated retailers as Fair Price Shop dealers in a phased manner to make available all essential commodities to the card holders under one roof.

In view of the above, all the Collectors/Chief Rationing Officer, Hyderabad are instructed to take necessary steps for conversion of the existing

nominated retailers Fair Price Shop dealers in a phased manner and report compliance.

Sd/- Bhanwar Lal
Commissioner of Civil Supplies

No doubt this Circular refers to the recommendations of the Group of Ministers during the meeting held by the Hon'ble Chief Minister on 15-1-2005. A decision had been taken regarding conversion of the existing nominated retailers as Fair Price Shop dealers in a phased manner to make available all essential commodities to the card holders under one roof. G.O.Ms.No.93 dated 13-7-2005 also had been relied upon which refers to G.O.Ms.No.470, Food & Civil Supplies dated 10-11-1995 and G.O.Ms.No.495 dated 16-12-1995 and the Commissioner of Civil Supplies Ref.No.N4/6899/04 dated 16-5-2005 wherein the Food Advisory Committee at District Level, Mandal level, Divisional Level, Circle Level, Municipal Corporation Level, Municipality Level, Ward Municipality Level, Fair Price Shop (Urban) Level and other aspects had been dealt with. Certain Press notes also had been relied upon. G.O.Ms.No.53, dated 6-10-2003 had been strongly relied upon and Clause 5 of the Annexure deals with Minimum general educational qualifications and Clause 6 deals with Age limit, and the said Clauses read as

hereunder :

**Clause 5 : MINIMUM GENERAL EDUCATIONAL QUALIFICATIONS:**

5.1 A pass in 10th class shall be the minimum general educational qualification required for appointment as fair price shop dealers;

(a) Persons possessing the minimum general educational qualifications and the persons having higher qualifications, if applied, shall be treated equally for the purpose of appointment; and

(b) Where no candidate is available with the said minimum general educational qualifications, a candidate possessing a lesser educational qualifications, which shall not be less than a pass in 5th class, if applies, may be considered for appointment.

5. AGE LIMIT: The minimum age for applying for grant of a F.P. Shop shall be 18 years. The maximum age limit is 40 years.

**22.** Further reliance was placed on the Government Memo No.148/CS.I/99-1 dated 22-1-1999 and the same reads as hereunder :

Government of Andhra Pradesh
FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS (CS.I) DEPARTMENT

Govt.Memo No.148/CS.1/99-1 Dated : 22.1.1999

Sub:- CIVIL SUPPLIES – PDS – Guidelines for opening of new Fair Price Shops – Revised instructions issued – Regarding.

Ref: 1. Govt.Memo No.8181/CS.1/88-1, F&A Dept. Dated : 5-2-1988

2. Govt.Memo No.40829/CS.IV-1/91-1, F&A Dept, Dated : 26-7-91.

***

In the reference 1st cited, though the powers of sanctioning of new Fair Price Shop were delegated to the Chief Rationing Officer, Hyderabad in respect of twin cities of Hyderabad and Secunderabad and to Collectors in respect of other than places, it is observed that in some districts the powers of sanctioning of new Fair Price Shops are being exercised by other officials viz., Revenue Divisional Officer etc., which is a deviation of the Government instructions issued in reference 1st cited. The following instructions are, therefore, communicated for strict compliance.

In the reference 2nd cited, the following guidelines in the matter of opening new fair price shop were issued :

i) Each and every village should have a separate Fair Price Shop.

ii) Fair Price Shops should be within a distance of one KM from the residences of card holders.

iii) Whether there is need for a separate Shop to cover Harijan Basti in the village.

iv) In tribal areas, Fair Price Shops may be created even for 1,000 population.

v) In non-tribal areas, Fair Price Shops may be opened for every 1650 population.

vi) The Shops must be economically viable.

It is observed that in spite of specific guidelines that the shops must be economically viable, recently, in some Districts, new Fair Price Shops are being opened even for a few cards rendering both the new shop and also the bifurcated shop, economically unviable. To obviate this unhealthy trend, the following additional guidelines are issued :

i) In rural areas no new Fair Price Shop should be sanctioned if the number of cards to be attached to the Fair Price Shop is less than 350.

ii) In urban areas no new Fair Price Shop shall be sanctioned if the number of cards to be attached to the Fair Price Shop is less than 500.

iii) In city areas no new Fair Price Shop shall be sanctioned if the number of cards to be attached to the shop is less than 800.

If for special reasons like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts, the Collectors may if they are fully satisfied for splitting the shops for the benefit of the community, may do so giving reasons for such sanction of new shops.

Similarly, where the total number of cards in a village is less than 350, a shop may be continued/sanctioned. Attaching of cards of one village to a shop in another village should be avoided.

The above guidelines shall apply even to

the existing fair price shops. The District Collectors and Chief Rationing Officer, Hyderabad are requested to review the position and re-organise the Fair Price Shops wherever necessary.

H.S.Brahma
Ex-Officio Secretary to Government

**23.** G.O.Ms.No.32, Consumer Affairs, Food & Civil Supplies (CS-I) Department dated 30-8-2007 refers to G.O.Ms.No.53 dated 6-10-2003 and also the High Court order received from the Assistant Registrar of High Court dated 30-1-2007, and the said G.O.Ms.No.32 reads as hereunder :

Government of Andhra Pradesh
Abstract

Civil Supplies – Selection and appointment of Fair Price Shop Dealers under the Andhra Pradesh Public Distribution System (Control) Order, 2001 – Amendment to Guidelines – Issued.

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CONSUMER AFFAIRS FOOD & CIVIL SUPPLIES (CS-I) DEPARTMENT

G.O.Ms.No.32 Dated : 30-8-2007

Read the following :-

1. G.O.Ms.No.53, CAF & CS (CS-I) Department dated 6-10-2003.
2. From A.P. High Court order received from the Asst. Registrar of High Court dated 30-1-2007.

***

In the G.O. first read above, the following guidelines for selections and appointment of F.P.

Shop dealers are issued :-

1. A pass in 10th class shall be minimum general educational qualification .
2. Minimum age for applying for F.P. Shop dealershipis 18 and maximum age limit is 40 years.

It is further informed hat Circular instructions have been issued vide Commissioner of Civil Supplies Memo No.PDS.III(3)/10427/06 dated 23-3-2006 that :

a) Selection and appointment of F.P. Shop dealer will apply for conversion of nominated retailers into F.P. Shop dealer.
b) While filling up the fair price shop vacancy and creation of new fair price shop, preference shall be given to the nominated retailers, who fulfill the requisite qualifications laid down in the guidelines issued from time to time.

The Hon'ble High Court of A.P. while disposing the Writ Petition Nos.27066, 27067, 27068, 27069 and 27070 had given direction as follows:-

> "In the circumstances stated by the petitioners, the respondents are directed to consider the cases of the petitioners for conversion as fair price shop dealers in accordance with the existing policy of the State Government. If the State Policy obligates consideration of the cases of the petitioners for conversion as fair price shop dealers, the respondents shall consider the cases of the petitioners in terms of the existing policy of the State, expeditiously."

The intention of the Government is to make available all E.Cs. under one roof. However the hawkers/NRs are selling only PDS Kerosene to card holders since a long time having obtained licence under the A.P.P.P. (L&RS) Rules, 1980.

On the recommendation of Group of Ministers, the Government have taken a decision to convert those of the hawker/NRs whose record was clean and otherwise eligible for appointment as Fair Price Shop Dealer as per rules in the phased manner.

In view of the above, the following amendment is made to the guidelines issued in G.O.Ms.No.53, dated 6-10-2003.

AMENDMENT

In the guideline No.9 after item No.3, the following shall be inducted:

(iv) "Preference shall be given to the hawkers/N.Rs. having licence under the APPP(L&RS) Rules, 1980, for selection and appointment as Fair Price Shop Dealer while filling up the existing or new F.P. Shop vacancy. All requisite qualifications and guidelines issued by Government from time to time shall be applicable to those hawkers/NRs while converting into F.P. Shop dealer subject to fulfilling the conditions of appointment of F.P. shop dealers by the N.R./Hawkers who are otherwise eligible for appointment.

(BY ORDER AND IN The NAME OF THE GOVERNOR OF ANDHRA PRADESH)

G.N.RAO
E.O. Secretary to Government

It is pertinent to note that the amendment in guideline No.9

after item No.3, specifies : "*All requirements and guidelines issued by Government from time to time shall be applicable to those hawkers/N.Rs. while converting into F.P. shop dealer subject to fulfilling the conditions of appointment of F.P. shop dealers by the N.R./Hawkers who are otherwise eligible for appointment*". Even prior thereto, in G.O.Ms.No.32, it is pertinent to note that it is specified : "*On the recommendation of group of Ministers the Government have taken a decision to convert those of the hawker/NRs whose record was clean and otherwise eligible for appointment as Fair Price Shop dealers as per rules in the phased manner".* This may have to be read along with G.O.Ms.No.53, the relevant portion of which had been already referred to supra and also the policy and the recommendations made by the group of Ministers which had been specified above.

**24.** Since this Court already had expressed the opinion that in the light of the submissions made in certain portions of the writ affidavit and also the specific denial made by the 5th respondent in particular in personal capacity, the standard of proof required in the context of mala fides had not been discharged by the writ petitioner, the questions which may have to be decided in the light of the respective stands taken by the parties are as

hereunder :

1. Whether bifurcation of the shop in question made by the respondents-authorities to be found fault in any way in the facts and circumstances of the case ?

2. Whether the appointment of the 6th respondent in the facts and circumstances as Fair Price Shop Dealer of Shop No.27C to be sustained and if not what further steps or directions to be given in this regard ?

**25.** On the aspect of bifurcation in the case of Public Distribution System, it is needless to say that the same is governed by the Essential Commodities Act 1995 and the relevant Control Orders. Normally, in view of public interest and in accordance with the Circulars, when a decision had been taken by the competent authority to effect bifurcation, unless it is totally contrary to the guidelines or the Circulars, normally such bifurcation not to be disturbed. Even otherwise, the writ petitioner cannot claim any legal right as such whatsoever when the competent authority had taken a decision to bifurcate a Shop, no doubt, subject to the guidelines. On an over all appreciation of the facts and circumstances, the writ petitioner was not able to point out any gross

contravention of the guidelines or the Circulars except pointing out that in the decision making process, some manipulations had been resorted to by the 4th respondent in relation to the Committee meetings and also by pointing out certain of the proceedings. It is pertinent to note that for sufficiently a long time the petitioner and the 6th respondent have been fighting the litigations. It is also true that at one point of time, the 6th respondent having been unsuccessful, had confined himself only to that of a Kerosene hawker. The relevant portions of the prior orders would go to show that the 6th respondent even had not produced the relevant Certificates to satisfy the eligibility criteria. Hence, it cannot be in any doubt or controversy that at a particular point of time, the 6th respondent was held to be ineligible to be appointed as a Fair Price Shop Dealer.

**26.** Be that as it may, as far as the question of interference by a writ Court in relation to bifurcation is concerned, strong reliance was placed on the decision of the Apex Court in **District Collector and another Vs. B.Suresh and others** [15] wherein the question of right to have notice when the State Government decides to bifurcate the shop and reduce the number of cards per shop had fallen for consideration and the Apex Court

observed at para-4 as hereunder :

> "Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, which order has been framed under the provisions of the Essential Commodities Act, 1955 a Fair Price Shop Dealer has no right to be appointed as such dealer. The licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government."

**27.** It is needless to say that in the light of the specific stand taken by the 4th respondent, it is clear that as a policy measure in pursuance of guidelines only, this decision had been taken and the number of cards and the equi-distribution of the said cards amongst the bifurcated shops and retention of one shop to the existing Fair Price Shop Dealer, the writ petitioner, would go to show that the decision making is in no way vitiated. Even otherwise, in the realm of administrative sphere, when such a decision had been taken, the Courts should be slow in interfering,

as observed by the Apex Court as well in the decision aforesaid.

**28.** In **P.Narasimhulu Vs. The District Collector, Nellore, Nellore District and six others** [16], a Division Bench of this Court observed that the Division Bench is of the view that the decision taken by the official respondents to bifurcate the shop is purely an administrative decision and in the absence of any mala fide, there is no warrant for the Court's interdiction in the matter.

**29.** This Court, with all care and meticulously examined all the records, the voluminous records produced before the Court and this Court is satisfied that as far as the decision taken relating to the bifurcation of the shop into four shops keeping in view the public interest is concerned, the same cannot be found fault and hence the same to be confirmed and accordingly it is hereby confirmed. Even otherwise, it is made clear that the *locus* of the writ petitioner in this regard also is limited for the reason that though the cards are reduced by virtue of the bifurcation, the petitioner also is retained with one shop, the principal shop, no doubt the bifurcated shops are to be allotted to the other Dealers.

**30.** The next question is in relation to the

appointment of the 6th respondent as Fair Price Shop Dealer of Shop No.27C. Disqualification on the ground of educational qualification and also on the ground of age had been argued in elaboration. No doubt, submissions at length were made that the writ petitioner has no *locus standi* at all to question the appointment of the 6th respondent as such since it cannot be said that the writ petitioner is a rival claimant relating to Shop No.27C and it is within the discretion of the competent authority, the District Collector, in making an order of bifurcation and also the Revenue Divisional Officer, the appointing authority, and such discretion not to be interfered with by this Court. Further, it is stated that these contentions relating to age and educational qualifications if to be taken into consideration seriously, the conversion in a phased manner contemplated in relation to the Kerosene hawkers may not be implemented in true spirit since several of such hawkers may not be having educational qualifications or the age of such may be even barred. The said contention on the face appears to be very attractive. Reliance was placed on the decision of this Court in **P.Narasimhulu Vs. The District Collector, Nellore, Nellore District** [17] wherein the learned Judge observed :

"The learned Counsel for the petitioner Sri V.Sudhakar Reddy would contend that the impugned order of bifurcation passed by the 1st respondent is inconsistent with the guidelines issued by the State Government in a memo dated 22-01-1999 regarding bifurcation of existing fair price shops. In the said memo, the State Government had issued revised guidelines. Accordingly, in rural areas no new fair price shop should be sanctioned if the number of cards to be attached to the fair price shop is less than 350. However the guidelines themselves clarify that for special reasons like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts, the Collector may by recording reasons, sanction new shops notwithstanding the limits generically instructed. In view of the reasons recorded by the 1st respondent for issuing the order of bifurcation though there is allocation of lesser cards than the viability limit stipulated in the Government's memo dated 22-01-1999, this Court discerns no infirmity in the order of the 1st respondent impugned in this writ petition.

Public distribution system is the prime agenda of the scheme and distribution of essential commodities in an atmosphere of equilibrium in the village is a relevant administrative concern, which cannot be jettisoned on the jejune ground that the petitioner would be left with an unviable number of cards. If the petitioner feels that the number of cards allotted after bifurcation makes the pursuit of

the business unviable, he is at liberty to surrender his authorization".

**31.** Further, reliance was placed on **P.Ratnaiah Vs. The District Collector, Civil Supplies Wing, Nellore District Nellore** [18] wherein it was observed :

> "Learned Assistant Government Pleader for Civil Supplies, however, submits that as per G.O.Ms.No.25, dt.18.3.1998, any person aggrieved by the orders passed by the District Collector ordering bifurcation, has right of appeal before the Director of Civil Supplies. In view of the remedy of appeal, liberty is reserved to petitioner to file appeal before the Director of Civil Supplies within one week from the date of receipt of a copy of this order. As and when such appeal is filed, the same may be entertained and decided by the Director of Civil Supplies on its own merits regarding viability of petitioner's FPS."

**32.** Reliance also was placed on the decision in **Yeluchuri Madhavarao Vs. Mandal Revenue Officer, Prathipadu, East Godavari District and others** [19] wherein it was observed that it is for the authorities to decide whether one person or two persons can distribute the commodities to the card holders and it is not for this Court to decide whether there is any justification for opening another shop or not. Further, reliance was placed on **Y.Madhava Rao Vs. Mandal Revenue Officer,**

**Prathipadu, East Godavari District** [20], the decision of the Division Bench of this Court dated 26-4-1991. Strong reliance was placed on **K.Sreenivasulu Naidu Vs. The District Collector, Chittoor and others** [21] wherein it was held :

> "The learned Counsel submits that even in the administrative decisions, the authorities are bound to follow the principles of natural justice, when the decision effects the right of the petitioner. In support of his contention, the learned Counsel cited : (1) *State of Orissa Vs. Dr.(Miss) Binapani Dei (AIR 1967 S.C. 1269), (2) Smt.Menaka Gandhi Vs. Union of India (AIR 1978 S.C. 597), (3) A.K. Kraipak Vs. Union of India (AIR 1970 S.C. 150), (4) Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi (AIR 1978 S.C. 851), (5) Swadeshi Cotton Mills Vs. Union of India (AIR 1981 S.C. 818), (6) National Textile Workers' Union Vs. P.R. Ramakrishnan (AIR 1983 S.C. 75), (7) Public Vigilance by Bharadwaja Vs. The Chief Secretary, Government of Andhra Pradesh (1992(3) A.L.T., 725), (8) Suri Prakasham Vs. State of A.P. (1994(3) A.L.T., 702), Ravi S.Naik Vs. Union of India (AIR 1994 S.C. 1558)".*

It was also further observed that :

> "I do not wish to go into the details of each case cited by the learned Counsel. The decision at Sl.No.7 is not on the point under issue. Suffice to say that the Supreme Court has elaborately considered the position of administrative decisions

in the administrative law in various decisions. The principle can be summarized thus: (1) The Rule audi alteram partem is one of the basic principles of natural justice. (2) The principle is not only held to be applicable to quasi-judicial proceedings but also administrative proceedings involving civil consequences. (3) The dividing line between quasi judicial power and administrative power is not totally eclipsed and obliterated. (4) Principles of natural justice is not embodied rule, but it is flexible, malleable and adoptable. (5) The application of the rule depends upon facts and circumstances of each case. (6) The rule operates in areas not covered by any law validly made. (7) They do not supplant the law, but supplement the law."

Further it was observed :

"However, if there is a change in policy or in public interest, the position is altered by a rule or legislation, no question of legitimate expectation would arise.

It is, therefore, clear that if a denial of legitimate expectation in a given case amounts to denial rights guaranteed or is arbitrary or discriminatory and violative of principles of natural justice, the person aggrieved can seek protection under Article 14 of Constitution.

As already stated supra, the State has taken a decision to create Fair Price Shops for every 1650 population or 350 cards in public interest. The policy of the Government being in the interest of public and intended to supply the essential commodities at the nearest possible point of the residences of citizens it cannot be said that the

policy is unreasonable. Therefore, in the pursuit of implementation of the public policy the State is entitled to review the constitution of Fair Price Shops and if it is found that new Fair Price Shops are required to be created and deletion of some of the cards becomes necessary for the purpose of functioning of the new Fair Price Shop, the action of deletion of Cards cannot be said to be arbitrary and unreasonable.

Therefore, in view of the guidelines and the policy evolved by the Government and in view of the fact that the petitioner does not have any legal right to retain the cards, it cannot be said that the petitioner should be given an opportunity before the cards respondents deleted from his shop and attached to the newly created Fair Price Shop at Basavatharakam village. The decision to reduce the cards is an administrative act, yet it did not have the effect of civil consequences inasmuch as the cards have not been reduced below the minimum level."

**33.** This Court also had carefully analysed Rc.E.438/2006 dated 13-9-2006, a proceeding of the District Supply Officer and the proceedings dated 23-10-2006 and the proposal on bifurcation and the reminder and several representations and para-23 of Rc.B.12/98 in particular and also the representations of the father of the writ petitioner, a retired Revenue official. Though the last portion of the order of the District Collector directing to

appoint the 6th respondent in proceeding dated 17-3-2007 is not happily worded, it is needless to say that only by virtue of a consequential action, the appointment had been made. An attempt was made by placing Rc.B. 568 dated 13-5-2007, the proceeding of the Joint Collector, Nellore, before this Court to show that all is not well with the writ petitioner. This aspect need not be seriously considered. The proceedings of the Revenue Divisional Officer, Kavali in D.Dis.No.1845/84, dated 15-6-1991 and the relevant portions thereof would clearly go to show that at a particular point of time the 6th respondent was not qualified to be appointed as a Fair Price Shop Dealer. Several of the representations made by the father of the writ petitioner and a few of the representations made by the writ petitioner as well and the contents thereof need not be referred to in detail and all these representations would go to show that the writ petitioner is anxious in continuing the Fair Price Shop as it was without any bifurcation. In W.P.No.13095/2006 dated 29-6-2006, a learned Judge of this Court made the following order :

> "The learned Counsel on either side fairly conceded that the issue involved in this Writ Petition is squarely covered by a judgment of this Court in W.P.No.3015 of 2006, dated 3-3-2006. Relevant portion of the said judgment reads as under :

"In the circumstances stated by the petitioners, the respondents are directed to consider the cases of the petitioners for conversion as fair price shop dealers in accordance with the existing policy of the State Government, including in any existing or arising vacancies of fair price shops. If the State policy obligates consideration of the cases of the petitioners for conversion as fair price shop dealers, the respondents shall consider the cases of the petitioners in terms of the existing policy of the State, expeditiously. The Writ Petition is disposed of, as above. There shall be no order as to costs".

Therefore, this Writ Petition is also disposed of in terms of the above judgment. However, the respondent-authorities are directed to consider the case of the petitioner within a period of two months from the date of receipt of a copy of this order."

**34.** In **P.Ramesh and others Vs. The Commissioner of Civil Supplies and others** [22], a learned Judge of this Court observed :

"The petitioner and other retail dealers and hawkers made further representations seeking implementation of the Circular of the 1st respondent. Thereafter it is stated, the 1st respondent issued another Circular dated 22-7-2005 directing all the Collectors/Chief Rationing Officer, Hyderabad to examine the cases of all the retailers. The petitioners' grievance is that till now

the Circular instructions issued by the 1st respondent have not been implemented. The petitioners claim that about 35 (thirty five) fair price shops have fallen vacant in Warangal District and the respondent Nos.2 and 3, without considering the cases of the petitioners for conversion as fair price shop dealers, are proceeding to appoint temporary fair price shop dealers, are proceeding to appoint temporary fair price shop dealers and are considering persons without any experience. The Writ Petition is filed for appropriate relief on the above pleadings.

In the circumstances stated by the petitioners, the respondents are directed to consider the cases of the petitioners for conversion as fair price shop dealers in accordance with the existing policy of the State Government, including in any existing or arising vacancies of fair price shops. If the State policy obligates consideration of the cases of the petitioners for conversion as fair price shop dealers, the respondents shall consider the cases of the petitioners in terms of the existing policy of the State, expeditiously. The Writ Petition is disposed of, as above. There shall be no order as to costs."

**35.** There cannot be any doubt whatsoever that when a policy had been formulated by the Government and in pursuance thereof the Kerosene hawkers to be absorbed in a phased manner, the authorities concerned may proceed with in accordance with the said policy. However, it is pertinent to note that the 6th respondent has

been continuing as a Kerosene hawker for sufficiently a long time being not qualified as a Fair Price Shop Dealer at one point of time. It is also pertinent to note that for reasons best known the 6th respondent had been moving Heaven and Earth to see that he is appointed as a Fair Price Shop Dealer. This is very clear from the anxiety of the 6th respondent in making the representation which was treated as a Revision in pursuance of which some resultant action had been taken. It is also needless to say that in Food Advisory Committee the 6th respondent also was shown as a Member. It may be that along with the process of bifurcation, the 6th respondent in his own interest had been trying his level best to see that at least to one such bifurcated shops, he is appointed as a Fair Price Shop Dealer under the guise of the policy.

**36.** When a policy is formulated by the Government, the policy to be clear. When the qualifications relating to age and qualifications relating to education are to be applied even while implementing the policy, the eligibility criteria may have to be looked into while considering such cases in the case of absorption in a phased manner. It is true that by virtue of the policy, the 6th respondent's case can be considered, provided otherwise the eligibility criteria are to be satisfied. This is

the only conclusion at which this Court can arrive at in the light of the G.Os. referred to supra since no other conclusion can be drawn in the peculiar facts and circumstances of the case. A person who had been unsuccessful and found to be ineligible at a particular point of time, if the policy does not permit, again circumventing and adopting a back door method and trying to capture the office of a Fair Price Shop Dealer, in the considered opinion of this Court is impermissible since such benefit cannot be derived by the 6th respondent under the guise of the policy which cannot be made applicable to him since he lacks the eligibility criteria specified by the G.Os.

**37.** The bifurcation of Fair Price Shops to be in public interest and taking into consideration the public convenience and the same to be made within the parameters, the guidelines and the Circulars governing the field. The absorption of original Kerosene hawkers in a phased manner being the policy of the Government, the authorities are at liberty to do so provided a case falls within the parameters of the policy and not beyond thereto. Under the colour of implementing the policy, ineligible Kerosene hawkers cannot be appointed as Fair Price Shop Dealers. If it is the policy of the Government

that all other eligibility criteria applicable to the appointment of Fair Price Shop Dealers to be relaxed or to be dispensed with while considering such cases for absorption in a phased manner, such policy should be clear and categorical and that being lacking in the case of the 6th respondent, who is unqualified at a particular point of time, he cannot get such benefit under the policy at a later point of time. This would be in a way doing violence to the very scheme of the Public Distribution System and also the policy and the other eligible persons would be deprived of an opportunity to apply for appointment as Fair Price Shop Dealers of such bifurcated Shops.

**38.** In view of the fact that the bifurcation of the Shops into four already had been upheld by this Court and inasmuch as one Shop i.e., Shop No.27, the principal Shop, had been retained with the writ petitioner only, and two Shops i.e., Shop Nos.27A and 27B had been notified, it is made clear that since the appointment of the 6th respondent is held to be invalid, the Shop No.27C also to be notified along with Shop Nos.27A and 27B. Let the official respondents further proceed with the filling up of these vacancies in relation to Shop Nos.27A, 27B and 27C in accordance with Law at the earliest possible time.

**39.** With the above directions, the Writ Petition is

disposed of. W.P.M.P.No.17782/2007 is closed. No order as to costs.

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Justice P.S.Narayana

Date :

L.R. copy to be marked: YES / NO

AM

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.10104 of 2007

Date :

Between :

I.Manga Raju s/o.
I.Seetharama Rao ..
Petitioner

And

The District Collector, Nellore

and others ..
Respondents

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[1] **AIR 1964 S.C. 72**
[2] **1979(3) SCC 489**
[3] **2005(5) SCC 181**
[4] **2000(2) SCC 617**
[5] **1993 Supp. (4) SCC 46**
[6] **2004(5) A.L.T., 322**

[7] 2003(8) SCC 673
[8] 1994(1) SCC 1
[9] 2001(5) SCC 289
[10] 2000(1) SCC 278
[11] AIR 2003 S.C. 2723
[12] AIR 2000 S.C.C. 833
[13] 1995(3) SCC 757
[14] 1983(1) A.L.T., 233
[15] 2000(1) A.L.D. 9(S.C.)
[16] W.A.No.425/2007, dated 4-7-2007
[17] W.P.No.475/2007, dated 3-4-2007
[18] W.P.No.12110/2004, dated 20-6-2005
[19] W.P.No.3619/1991 dated 19-3-1991
[20] W.P.No.454/91, dated 26-4-1991
[21] 1996(1) L.S. 16
[22] W.P.No.3015/2006 dated 3-3-2006